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सं. 4] नई दिल्ली, जनवरी 22—जनवरी 28, 2017, शनिवार/ माघ 2—माघ 8, 1938
No. 4] NEW DELHI, JANUARY 22—JANUARY 28, 2017, SATURDAY/ MAGHA 2—MAGHA 8, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 13 जनवरी, 2017

का.आ. 202.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नीचे दी गई सारणी के कालम (2) में विनिर्दिष्ट व्यक्तियों के स्थान पर कालम (3) में विनिर्दिष्ट व्यक्तियों को तत्काल प्रभाव से और अगले आदेशों तक, उक्त सारणी के कालम (1) में विनिर्दिष्ट राष्ट्रीयकृत बैंकों में निदेशक के पद पर नामित करती है:-

क्रम सं.	बैंक का नाम	वर्तमान निदेशक का नाम	प्रस्तावित व्यक्ति का नाम
	1.	2.	3.
1.	बैंक आफ बड़ौदा	श्रीमती सुरेखा मराण्डी	श्री अजय कुमार, क्षेत्रीय निदेशक, लखनऊ, भारतीय रिजर्व बैंक, 8-9, विपिन खंड, आरबीआई बिल्डिंग, गोमती नगर, लखनऊ-226010

2.	विजया बैंक	श्रीमती सुमा वर्मा	श्री जी.पी. बोराह, मुख्य महाप्रबंधक, मुम्बई क्षेत्रीय कार्यालय, भारतीय रिजर्व बैंक, पी.बी.नं. 901, मुख्य भवन, शहीद भगत सिंह रोड, मुम्बई-400001
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[फा. सं. 6/3/2011-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)
 New Delhi, the 13th January, 2017

S.O. 202.—In exercise of the powers conferred by clause (c) of the sub-section (3) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of The Nationalized Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominate the persons specified in column (3) of the table below as Directors of nationalized banks specified in column (1) thereof in place of the persons specified in column (2) of said Table, with immediate effect and until further orders:-

SI. No.	Name of the Bank	Name of the Existing Director	Name of the Persons proposed
	(1)	(2)	(3)
1.	Bank of Baroda	Smt. Surekha Marandi	Shri Ajay Kumar, Regional Director, Lucknow, Reserve Bank of India, 8-9, Vipin Khand, RBI Building, Gomti Nagar, Lucknow-226 010.
2.	Vijaya Bank	Smt. Suma Varma	Shri G.P. Borah, CGM, Mumbai RO, Reserve Bank of India, P.B. No.901, Main Building, Shahid Bhagat Singh Road, Mumbai- 400 001.

[F. No. 6/3/2011-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 16 जनवरी, 2017

का.आ. 203.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अरुनीश चावला के स्थान पर, श्री प्रशांत गोयल, संयुक्त सचिव (बजट), आर्थिक कार्य विभाग को तत्काल प्रभाव से और अगले आदेशों तक, सरकारी नामिती निदेशक नामित करती है।

[फा. सं. 6/3/(1)2012-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 16th January, 2017

S.O. 203.—In exercise of the powers conferred by clause (b) of Sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominates Shri Prashant Goyal, Joint Secretary(Budget), Department of Economic Affairs as Government Nominee Director on the Board of Directors of Oriental Bank of Commerce, with immediate effect and until further orders vice Shri Arunish Chawla.

[F. No. 6/3/(1)2012-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 16 जनवरी, 2017

का.आ. 204.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 की धारा 25 की उप-धारा (1) के खण्ड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री मनीष कुमार, अवसर सचिव, वित्तीय सेवाएं विभाग, वित्त मंत्रालय को तत्काल प्रभाव से और अगले आदेशों तक, स्टेट बैंक आफ त्रावणकोर के निदेशक मण्डल में सरकारी नामिती निदेशक नामित करती है।

[फा.सं. 6/3/(2)2012-बीओ-1]

ज्ञानोत्तम राय, अवसर सचिव

New Delhi, the 16th January, 2017

S.O. 204.—In exercise of the powers conferred by clause (e) of Sub-section (1) of Section 25 of The State Bank of India (Subsidiary Banks) Act, 1959, the Central Government, hereby nominates, Shri Manish Kumar, Under Secretary, Department of Financial Services, Ministry of Finance, as Government Nominee Director on the Board of Directors of State Bank of Travancore with immediate effect and until further orders.

[F.No. 6/3/(2)2012-BO-I]

JNANATOSH ROY, Under Secy.

संस्कृति मंत्रालय

नई दिल्ली, 17 जनवरी, 2017

का.आ. 205.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय आंचलिक विज्ञान नगरी, अलीगंज एक्सटेंशन, सेक्टर-ई, एकता विहार, लखनऊ-226024 जिसमें 80 प्रतिशत से अधिक अधिकारियों/ कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. ई-13016/1/2017-हिंदी]

पंकज राग, संयुक्त सचिव

MINISTRY OF CULTURE

New Delhi, the 17th January, 2017

S.O. 205.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the offices of Anchlik Vigyan Nagri, Aliganj Extension, Sector-E, Ekta Vihar, Lucknow-226024 under the Ministry of Culture wherein more than 80% officers/staff have acquired working knowledge of Hindi.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. E-13016/1/2017-Hindi]

PANKAJ RAG, Jt. Secy.

वस्त्र मंत्रालय

नई दिल्ली, 17 जनवरी, 2017

का.आ. 206.—केन्द्र सरकार (संघ के शासकीय प्रयोजनों के लिए प्रयोग) राजभाषा नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय को जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

राष्ट्रीय हथकरघा विकास निगम लिमिटेड (कारपोरेट कार्यालय), वेगमंस बिजनेस पार्क, चतुर्थ तल, टॉवर-1, प्लॉट नं. 3, सेक्टर नॉलेज पार्क-तृतीय, सूरजपुर-कासना मेन रोड, ग्रेटर नोएडा-201 306 (उत्तर प्रदेश)

[सं. ई-11016/1/2015-हिंदी]

पुनीत अग्रवाल, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 17th January, 2017

S.O. 206.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Ministry of Textiles, more than 80% staff have acquired working knowledge of Hindi :

National Handloom Development Corporation Limited (Corporate Office), Wegmans Business Park, 4th Floor, Tower-1, Plot No. 3, Sector Knowledge Park-III, Surajpur-Kasna Main Road, Greater Noida-201 306 (Uttar Pradesh)

[No. E-11016/1/2015-Hindi]

PUNEET AGRAWAL, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 18 जनवरी, 2017

का.आ. 207.—राष्ट्रपति, श्री मृन्मोय कुमार भट्टाचारजी को दिनांक 02.01.2017 (पूर्वाह्न) से 65 वर्ष की आयु अर्थात् 14.12.2021 तक अथवा अगले आदेशों तक, जो भी पहले हो, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, गुवाहाटी के पीठासीन अधिकारी के रूप में नियुक्त करते हैं।

[सं. अ-19011/01/2017-सीएलएस-II]

एस. के. सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th January, 2017

S.O. 207.—The President is pleased to appoint Shri Mrinmoy Kumar Bhattacharjee as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati with effect from 02.01.2017 (Forenoon) till he attains the age of 65 years i.e. up to 14.12.2021 or until further orders, whichever is earlier.

[No. A-19011/01/2017-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 18 जनवरी, 2017

का.आ. 208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 83/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/388/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/05) of the Central Government Industrial Tribunal-cum-Labour

Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 18.01.2017.

[No. L-22012/388/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/83/05

Shri Ramphal Urf Shyamphal,
S/o Shri Mansa Ram,
Vill/PO Mahora, Baikunthpur,
Chhattisgarh

...Workman

Versus

Chief General Manager,
Baikunthpur Area of M/s. SECL,
PO Baikunthpur,
Chhattisgarh

...Management

AWARD

Passed on this 11th day of November, 2016

1. As per letter dated 18-8-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-L-22012/388/2004-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Chief General Manager, Baikunthpur Area, SECL in dismissing Shri Ramphal, S/o Shri Mansa Ram, General Mazdoor Category-I for short attendance and absence from duty is legal and justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 8/1 to 8/2. Case of Ist party workman is that he was working as General Mazdoor Category I since 1983 at churcha colliery. In the year 1991, dacoity was committed at Village Narayanpur Tehsil. Ist party workman was impleaded as accused in the matter, he was detained in jail during the period from 16-7-91 to 30-5-92. Ist party workman could not attend his duty during above said period. After he was released on bail on 30-5-92, he submitted application with documents requesting management to allow him to join duty. He was not allowed to join duty. On 10-4-95, he received information about his dismissal without any notice. The management did not consider his applications for resuming duties. Ist party reiterates that his services are terminated without notice. He is illiterate. Termination of his service without chargesheet or enquiry is illegal. On such ground workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at page 9/1 to 9/5 opposing claim of Ist party. 2nd party submits that workman was initially appointed as general Mazdoor Category I, he was habitually absent from duty without permission or sanctioned leave. Workman did not show any interest in his service. Attendance particulars of workman during the year 1991 to 1994 are given in para 3 of the written statement. The attendance of workman was 95 days in the year 1991, 86 days in the year 1992, 65 days in 1993, Nil in 1994. Chargesheet was issued to workman on 29-7-94, any reply was not received from workman. Therefore management decided to conduct enquiry appointing shri A.K.Mukherjee enquiry Officer, shri Bhide Management representative. Though the workman was issued memo of enquiry, workman didnot attend Enquiry Proceeding. Public notice was issued in daily newspaper. Workman not appointed enquiry Proceedings, enquiry was conducted exparte. Evidence of management was recorded in enquiry Proceedings. Enquiry officer submitted report holding workman guilty of the charges. Enquiry Report was submitted before Competent authority after processing the notesheet, punishment of termination of services was imposed. Management submits that if enquiry is found vitiated, it may be permitted to prove the charges.

4. 2nd party management further reiterates that management was not intimated about involvement of workman in criminal offence. Workman is government employee, he was bound to give information about his details in police in criminal case. Services of Ist party were terminated on 10-4-95. All adverse contentions have been denied. It is reiterated that chargesheet was issued to workman for gross misconduct relating to unauthorized absence. Workman was given opportunity for his defence. Workman chosen not to participate in enquiry despite notice published in

newspaper. On such ground, 2nd party reiterates termination of services of workman is proper and legal. Workman is not entitled to any relief.

5. As per order dated 3-5-15, the enquiry conducted against workman is found legal and proper.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. The term of reference pertains to legality of termination of services of workman. Enquiry conducted against workman is found legal and proper. Management has produced documents of enquiry at exhibit M-1. Whether charges against workman are proved needs to be decided considering evidence in Enquiry Proceedings. Documents Page 7 of enquiry proceedings shows statement of management representative was recorded as witness of management. Statement of said witness of management is devoted that workman was absent from January 94 to June 94 as per "C" form register. The attendance of Ist party workman was 95 days in 1991, 86 days in 1992, 65 days in 1993. Workman had not participated in enquiry. He failed to cross examine management's witness. Considering unchallenged evidence of witness of management, the charge of unauthorised absence against workman is established. For above reasons, I record my finding in point No.1 in Affirmative.

8. Point No.2 The punishment of dismissal/ termination imposed against workman for unauthorized absence. Chargesheet was issued for unauthorized absence and habitual absence to the workman on 29-7-94. Affidavit of workman filed w.r.t. Issue no.1 shows he was working as Mazdoor General Category I from 1983. Except unauthorized absence of workman, any other adverse record is not found. Considering the length of service, punishment of dismissal imposed against workman appears disproportionate. In my considered view, punishment of dismissal deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The dismissal of Ist party for unauthorized absence is not legal. Order of dismissal is set-aside. Punishment of dismissal is modified to compulsory retirement.
- (2) 2nd party is directed to pay retiral benefit to Ist party workman as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

का.आ. 209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 55/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/15/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/08) of the Central Government Industrial Tribunal-cum-Labour

Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 18.01.2017.

[No. L-22012/15/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/55/08

Shri Deen Dayal,
S/o Chotelal Kol,
Sakin Kusla Basra,
PO Pasan,
Annupur (MP)

...Workman

Versus

Chief General Manager,
Jamuna & Kotma Area of SECL,
PO Jamuna,
Annuppur (MP)

...Management

AWARD

Passed on this 10th day of November, 2016

1. As per letter dated 1-4-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/15/2008-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of SECL in dismissing Shri Deen Dayal w.e.f. 7-2-04 is legal and justified? If not, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/2. Case of Ist party workman is that his services were illegally terminated w.e.f. 7-2-04. That Ist party workman was not keeping well, he was suffering from illness, he had requested management for his examination by Medical Board. Without considering his request, he was shown unauthorized absent. Chargesheet was issued without conducting any enquiry obtaining his signature on blank paper. His services were terminated. That the order of termination dated 7-2-04 was not served on him. Said order was retained in custody of management. Workman was not given its information. The order of termination of his services was supplied to workman on 25-2-06 through dispatch. Workman was not paid amount of his PF on the pretext that the colliery was closed and record was destroyed. Ist party workman further submits that action of the management terminating his services without examining him through medical board is illegal. He was shown unauthorisely absent without any justification. He also claimed that farsh of enquiry was made by the management. On such ground, he prays for his reinstatement with consequential benefits.

3. 2nd party management filed Written Statement on 14-7-2010 opposing claim of workman. 2nd party submits that workman was working as Drill Helper in Kotma West Colliery, he was habitual absentee. Workman was continuously absenting from 29-9-02. Workman was absent without intimation, permission or sanctioned leave. His attendance of workman in 2000 was 145 days, 2001- 102 days and in 2002 – 90 days. Chargesheet was issued to workman under clause 26.24, 26.30 of standing orders on 18-12-2003. Workman submitted reply. It was found unsatisfactory. Shri Ajay Behra was appointed Enquiry Officer, Shri R.K.Sharma was appointed as Presenting Officer. The enquiry memo was issued on 13-1-04. Workman appeared in the enquiry, management representative was present. Workman was allowed Defence Assistant. When charges were explained to workman, he admitted charges against him. Presenting Officer was directed to adduce evidence/ statement. 2nd party reiterates that from evidence in Enquiry Proceedings, charges against workman were proved. Enquiry Report was submitted holding workman guilty of the charges. After issuing showcause notice to the workman, punishment of dismissal was imposed. 2nd party reiterates that workman was given opportunity for his defence. Enquiry is properly conducted. Workman admitted charges in the Enquiry Proceedings. Punishment of dismissal imposed against him is legal.

4. As per order dated 25-3-2015, enquiry conducted against workman is held proper and legal.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	Partly in Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. Enquiry conducted against workman is found legal, question remains for decision is whether the charges alleged against workman are proved from evidence in Enquiry Proceedings. Chargesheet issued to workman is produced at Exhibit M-1. Chargesheet is issued to workman for habitual absence under Clause 26.24 and unauthorized absence under Clause 26.30 of the standing order. In Exhibit M-1/2 reply submitted by workman, he has stated that he was suffering from illness. He was receiving allopathic treatment but his illness was not cured therefore he was receiving local treatment. Exhibit M-1(4) is notice of enquiry. M-1(5) shows that workman had claimed that he would defend himself the statement of Presenting Officer is recorded at Page 12/6. Statement of Shri R.K.Sharma Management Representative is that workman was absent from duty since 29-9-02 without any intimation. He was also absent from duty. In 2002, his working days were 145, in 2001- 102 days and in 2002-92 days. In statement of workman recorded during Enquiry Proceedings, he had explained that he was suffering from illness, he received local treatment. The working days of workman during the year 2000-01, 2002 stated by management's representative itself cannot establish that workman was unauthorisely absent. The less working days during above period donot indicate that Ist party workman was unauthorisely absent without intimation. Statement of management representative cannot establish charge of habitual absence under clause 26.24. However from his evidence, unauthorized absence of Ist party workman charge under clause 26.30 of standing order is established. Accordingly I record my finding in Point No.1.

7. Point No.2- In view of my finding in Point No.1 charge under clause 26.30 is established workman was absent without intimation fr4om 29-9-02 till chargesheet was issued on 18-12-03 without giving intimation to the management, period of absence comes more than one year 3 months. Ist party workman filed affidavit of his evidence on other issues contending that charges alleged against him are false could not be considered under proviso of Section 11-A. considering the charge under Clause 26.30 of standing order is proved, punishment of dismissal imposed against workman cannot be said shockingly disproportionate.

8. Shri A.K.Shashi Advocate for management submitted copy of award in R/139/96. Each case needs to be decided considering evidence on record. Therefore I am not inclined to refer said judgment for taking decision. As the charge under clause under 26.30 is proved, punishment of dismissal against workman appears proper and legal. For above reasons, I record my finding in Point No.2 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management of SECL in dismissing Shri Deen Dayal w.e.f. 7-2-04 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

का.आ. 210.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1017/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/493/95-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1017/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 18.01.2017.

[No. L-22012/493/95-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st December, 2016

Reference: (CGITA) No. 1017/2004

The Depot Manager,
Food Corporation of India,
Palanpur – 176061

...First Party

V/s

Shri Jaswant Singh Lal Bihari,
Dudhiya Vadi,
Dhemerpur, Tajpura Road,
Behind High School,
Palanpur – 176061

...Second Party

For the First Party : Shri C.S. Naidu, Associates

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-22012/493/95-IR(C-II) dated 21.08.1996 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of FCI, Palanpur in not taking S/Sh. Jaswant Singh, Ram Avtar Singh and Matha Prasad in service is legal and justified? If not, to what relief the workmen concerned are entitled?”

1. The reference dates back to 21.08.1996. The second party submitted the statement of claim Ext. 8 on 25.11.1997 and the first party submitted the written statement Ext. 11 on 01.09.1998. Since then the second party has been absent and refrained to lead evidence despite giving dozens of opportunities. Thus it appears that the second party is not willing to prosecute the case.

2. Thus the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of FCI, Palanpur in not taking S/Sh. Jaswant Singh, Ram Avtar Singh and Matha Prasad in service is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

का.आ. 211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार के.ए.पी.एस. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 115/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-42012/42/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Kakrapar Atomic Power Station and their workmen, received by the Central Government on 18.01.2017.

[No. L-42012/42/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st December, 2016

Reference: (CGITA) No. 115/2005

The Station Director,
Kakrapar Atomic Power Station,
Nuclear Power Corporation of India,
Anumala, Via Vyara,
Surat (Gujarat)

...First Party

V/s

The Secretary,
Kakrapar Tribal Workers Association,
Devani Falia, Vyara,
Surat (Gujarat) – 394651

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/42/2005-IR(CM-II) dated 06.12.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Kakrapar Atomic Power Station in terminating the services of Shri Babubhai Thagiyabhai Gamit & 11 others on 25.03.2002 is legal and justified? If not, to what relief they are entitled to? And Whether the demand of Kakrapar Tribal Workers Association for treating these workmen as direct workmen of the corporation from the first date of joining in service is legal and justified? If so, to what relief they are entitled?”

1. The reference dates back to 06.12.2005. The second party submitted the statement of claim Ext. 6 on 08.10.2010 after a gap of 5 years and the first party submitted the written statement Ext. 11 immediately thereafter on 23.04.2011. Since then the second party has not been leading evidence despite giving him a last opportunity on 13.01.2016, 23.05.2016, 29.09.2016 & 03.10.2016. Thus it appears that the second party is not willing to prosecute the case.

2. Thus the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of Kakrapar Atomic Power Station in terminating the services of Shri Babubhai Thagiyabhai Gamit & 11 others on 25.03.2002 is legal and justified.” And “the demand of Kakrapar Tribal Workers Association for treating these workmen as direct workmen of the corporation from the first date of joining in service is not legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

का.आ. 212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार के.ए.पी.एस. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 116/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-42012/44/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 116/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Kakrapar Atomic Power Station and their workmen, received by the Central Government on 18.01.2017.

[No. L-42012/44/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st December, 2016

Reference: (CGITA) No. 116/2005

The Station Director,
Kakrapar Atomic Power Station,
Nuclear Power Corporation of India,
Anumala, Via Vyara,
Surat (Gujarat)

...First Party

V/s

The Secretary,
Kakrapar Tribal Workers Association,
Devani Falia, Vyara,
Surat (Gujarat) – 394651

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/44/2005-IR(CM-II) dated 06.12.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Kakrapar Atomic Power Station in terminating the services of Shri Navinbhai Kantilal Chaudhary & 21 others on 01.05.1999 is legal and justified? If not, to what relief they are entitled to? And whether the demand of Kakrapar Tribal Workers Association for treating these workmen as direct workmen of the corporation from the first date of joining in service is legal and justified? If so, to what relief they are entitled?”

1. The reference dates back to 06.12.2005. The second party submitted the statement of claim Ext. 6 on 08.10.2010 after a gap of 5 years and the first party submitted the written statement Ext. 11 immediately thereafter on 23.04.2011. Since then the second party has not been leading evidence despite giving him a last opportunity on 13.01.2016, 23.05.2016, 29.09.2016 & 03.10.2016. Thus it appears that the second party is not willing to prosecute the case.

2. Thus the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of Kakrapar Atomic Power Station in terminating the services of Shri Navinbhai Kantilal Chaudhary & 21 others on 01.05.1999 is legal and justified.” And “the demand of Kakrapar Tribal Workers Association for treating these workmen as direct workmen of the corporation from the first date of joining in service is not legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

का.आ. 213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 102/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/268/2000-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 18.01.2017.

[No. L-22012/268/2000-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/102/01

Shri Sakarlal S/o Shri Darshan.
C/o Shri P.K. Bannerjee,
PO Chandametta,
Distt. Chhindwara (MP)

... Workman

Versus

The Agent,
Ambara colliery of WCL,
PO Palachourai, via Junnardeo,
Distt. Chhindwara

... Management

AWARD

Passed on this 13th day of December, 2016

1. As per letter dated 28-5-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/268/2000-IR(C-II). The dispute under reference relates to:

“Whether the action of the Agent, Ambara colliery of WCL, PO Ambara, Distt. Chhindwara (MP) in terminating the services of Shri Sakarlal S/o Shri Darshan Tub Loader of Ambara Colliery w.e.f. 3-11-97 is legal and justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/5. Case of Ist party workman is that his services were terminated without following process of law. Chargesheet was issued to him was replied by workman denying charges against him that the enquiry was empty formality. Workman was not allowed defence representative on his behalf. A person of the choice of management was appointed as his representative who not acted as Defence Representative but supported the management. That there is no evidence about provoked workers for abstaining from work. That after accident, he had immediately rushed to Nagpur along with the injured workman. There was no question of instigating worker from abstaining from work. Management was responsible for accident, not taking safety measures. Shri M.K.Sharma foreman Incharge and Shri R.S.Verma of Sastry Incline were responsible for incident. They should have served with chargesheet for accident. No enquiry was conducted, the superior and managerial staff responsible for accident. On the other hand, chargesheet was issued to workman. He was made scape goat. That due to major incident, workers were shocked and annoyed with the accident and abstained from work continuously. Workers not worked for 3 shifts because they were afraid of further accident. The impugned co-worker had suffered severe injuries in the accident. It was natural. He had not used any filthy language neither he misbehaved with the officers. He complained about negligence of work for the accident. Workman claimed to be innocent. He also submits he is entitled for leniency. Punishment imposed against him is excessively harsh. On such ground, workman submits that action of management is arbitrary and illegal. He prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 5/1 to 5/8 opposing claim of workman. According to management, Ist party workman was working as tub loader. On 1-12-96 at Sastry Incline of Ambara colliery, one Hemraj met with accident in underground. He got seriously injured due to accident. Said workman was taken out to send him to Area Hospital by his colleague. It is alleged that workman obstructed Shri M.K.sharma overman saying “ iski mitti ho gayee, usko kandha de do”. Workman also started abusing in filthy language to superior mining staff and officers. Workman had abused Colliery Manager Shri Chouhan. Workman had covered face of the injured workman saying that he had died. There is no need to take him to hospital. Workman obstructed peoples taking injured persons to Area Hospital to save his life. Workman continued abuses to Shri R.M.Verma and Superior Mining Staff. He had taken Mine Manager to Kanhan. Workman created circumstances resulting possibility of breach of law and order. Because of the acts committed by workman colliery suffered loss of coal production in 3 shifts. For above incident, chargesheet was issued to the workman. Workman replied to the chargesheet denied charges against him. Enquiry was initiated against him. Shri P.R.Chouhan, Area Personal Manager was appointed as Enquiry Officer. Vide order dated 25-12-96, the Enquiry Officer was changed. Said Enquiry Officer was changed and Shri M.L.Chourasia was appointed as Enquiry Officer. Shri P.L.Chouhan as management representative was also changed. Because of his transfer Shri Suryavanshi was appointed as management representative. The enquiry was conducted on 14-1-97, 20-1-97, 27-7-97, 28-7-97. Workman was allowed co-worker. Management examined 4 witnesses. All of them were cross examined. 3 defence witnesses were examined. Enquiry was conducted allowing proper opportunity for defence to the workman. Enquiry Officer submitted his report holding charges against workman are proved. After issuing showcause notice and considering reply, the punishment of dismissal was imposed against workman. It is reiterated that punishment is imposed for proved charges against workman. Enquiry was not empty formality. The supervisory and managerial staff in charge of underground mine have taken every steps to avoid the accident. Even if there is negligence on their part, it was not proper for workman to take law in his hand and abuse supervisory staff. Ist party workman used filthy language against superior staff. Charges are proved as per the findings of Enquiry Officer. Action of management is proper and legal. Workman doesnot deserve any relief.

4. As per order dated 24-11-14, enquiry conducted against workman is held legal.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	Only charge No.1 under clause 26.18 is proved. Charge under clause 26.40 is not proved.
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(iii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

6. Term of reference pertains to legality of termination of services of workman. Enquiry conducted against workman is found legal and proper. Chargesheet Exhibit W-5 pertains to Ist party workman having used indecent language and threatened his superior officers to kill under clause 26.18. Charge No.2 pertains to workman created obstruction by deliberately spreading false information and creating obstruction in the production. Enquiry Officer held both charges are proved against workman.

7. Document Exhibit w-2 shows injured workman Hemraj had suffered polytrauma due to roof fall in mine. The injuries are reported fracture ridous (compound) left forearm, Fracture lower end of left femur and ribs 3rd to 7th premithorax. Whether the charges alleged against workman are proved needs to be decided considering evidence in Enquiry Proceedings. Enquiry Proceeding is produced at Exhibit M-1, its typed copy is also made available for convenience. Management's witness Shri B.S.chouhan Mine Manager shows on 1-12-96, while he was sitting in office, he received information that Hemraj suffered injuries by accident in Shastri incline. He alongwith Khanuja foreman came to Sastri incline. After sometime Hemraj was taken out on structure from the mine. Shri R.N.Verma and Sharma workman were accompanying him. Ambulance had gone to welfare. Injured Hemraj was on structure. Workman had covered his face by cloth saying that nothing was left, why the injured was being taken to dispensary. Workman abused in indecent manner saying injured was killed. He asked to Velcha for killing. The injured was taken to Area Hospital. Thereafter injured was taken to Nagpur for further treatment. If injured would have been kept for longer time, it would have been dangerous to his life. In his cross examination by management representative, witness confirmed the abuses given to him and threats given to kill him. Workman had covered face of injured person with cloth. Because of the acts committed by workman, workers did not attend work for 3 shifts. In cross examination by the workman, witness says that he had arranged injured person taking to Area Hospital in dumper. The witness of the management said that due to acts committed by workman, he said that he had provoked the workers. Further cross examination of above management's witness shows that workman along with others including family members of the injured had gone to Nagpur. Advance of Rs.20,000 was given to Ist party workman for meeting treatment of the accidents. Management's witness says he had no enmity with Ist party workman. He aid advance amount to him. Management's witness Shri R.M.Verma in his evidence says after receiving information about accident on 1-12-96, he had come to the place of accident. He had seen injured person was brought on structure. Workman had threatened to kill Mr. Verma he was asking for velcha. Workman was abusing in filthy language. Other workers asked workman to keep quiet. Workman was repeatedly asking for velcha threatening to kill supervisory staff. Workman covered face of injured with cloth. Similar evidence is given by management's witness Shri A.K.Sharma, G.S.Khanuja. Evidence of all witnesses of management is clear that advance amount was handed over to workman when the injured was taken for further treatment to Nagpur on -12-96 itself. Evidence further shows that other workers had asked workman to keep quiet. After workman gone to Nagpur along with injured person, he was not present. Placing cloth on face of injured cannot be said act provoking other employees abstaining from work. After workman had gone to Nagpur, there was no occasion for workman to provoke workers for abstaining the work. Evidence on record shows that injured had suffered injuries by side fall. He had suffered fractures of ribs, arms and other body parts. The injured was taken from underground on structure. Under such circumstances, covering face of injured by cloth can hardly be said an act of provocation to other labours for abstaining work. So far as evidence of defence witnesses, they did not say anything about the acts committed or abuses given by workman. Their silence about the accident could not be a ground for rejecting evidence of management's witnesses. Workman had abused and threatened Mine Manager Chouhan and other mining Supervisory staff Mr. Verma. In my considered view, evidence on record only proves Ist charge under clause 28.18. Evidence on Enquiry Proceeding cannot establish 2nd charge about workman provoking others for abstaining from the work. I record my finding in Point No.1 that charge under Clause No.26.18 is proved and 26.40 of standing not proved.

8. Point No.2- In view of my finding in Point No.1 charge only under clause 26.18 is proved against workman pertaining to absence and threats given to Mine Manager Chouhan and overman Shri Verma, question remains for decision is whether the punishment of dismissal imposed against workman is proper and legal.

9. Learned counsel for Ist party Shri R.S.Verma submits that the punishment of dismissal against workman is excessively harsh. The punishment of dismissal is not justified, lesser punishment should have been imposed.

10. Shri A.K.Shashi for management submits that proved charges against workman are of serious nature abusing and threatening Mine Manager and overman is serious misconduct. The dismissal is not justified.

11. Shri R.S.Verma, Advocate relies on ratio held in case between-

M.Gowrishankar versus Deputy General Manager (Sme) by Madras High Court in Writ Appeal No. 884 and 885 of 2015. In para 32 of the judgment, the principles are broadly emerged- (i) the right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, (ii) before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing orders, once the

misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time punishment cannot be interfered with by the Tribunal except in case where the punishment is so harsh as to suggest victimization.

In para 41 of the judgment their Lordship observed it has to be remembered that the Tribunal may hold that punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence.

In present case, the charge under clause 26.18 of standing order is established. The circumstances need to be considered that injured Hemraj suffered injury by side fall. The injured had suffered multiple fractures. The abuses or threats given by workman appears natural reaction to the occurrence of accident. Evidence on record is clear that workman had no enmity with Mine Manager Shri Chouhan. Workman did not actually inflict the injuries to Mine Manager or overman Mr. Verma.

12. Shri A.K. Shashi counsel for management relies on ratio held in case between-

West Bokaro Colliery (TISCO) Ltd. Versus Ram Pravesh Singh reported in 2009-I-LLJ-220(SC). Ratio held in the case is standard of proof in departmental proceeding is different from that of a criminal case.

Ratio held in case in Mahindra and Mahindra Ltd versus N.B. Narvade reported in 2005-I-LLJ-1129, their Lordship held on facts use of abusive, filthy language against superior officer held did not call for lesser punishment than dismissal.

In case between Cement Corporation of India versus State of HP and others reported in 1995-II-LLJ-987. Their Lordship held workmen are entitled to agitate against financial irregularities committed by the management. However they are not entitled to close the factory by illegally blowing the siren, creating a violent mob, and engage in a wide spread physical assault of almost all officers. There can be no other misconduct more serious than the one in the present case. There is no other proper and justified misconduct deserving the extreme penalty of punishment. The Labour Court held that the dismissal is not illegal.

In present case, the workman had not inflicted injuries to anyone. Clause under 26.40 of standing orders is not established. Workman had accompanied injured person to Nagpur for treatment. He was not present when workman abstained from work in 3 shifts. The amount towards expenses for treatment of injured was handed over by Manager to the workman himself proposing the confidence. Therefore ratio in above cited case cannot be applied to case at hand. For above reasons, ratio held in case between New Shorrock Mills versus Maheshbhai T. Rao reported in 1997-I-LLJ-1212 cannot be applied to present case. The copy of award in R/70/99 also cannot be relied for deciding the quantum of punishment.

13. From reasons discussed above, it is clear that after injured Hemraj was brought on structure from underground mine, workman abused and threatened Mine Manager Chouhan and abused Overman Shri A.K. Verma but he did not inflict injury to any one rather he accompanied injured, Mine Manager handed over Rs. 10,000 to workman for meeting expenses for treatment of injured. Charge No. 26.40 is not established when accident had occurred and Hemraj suffered serious injuries, it was quite natural that immediately workers did not join work, workman cannot be held responsible for it. As per affidavit, he joined service on 5-9-80. His length of service was not considered by Disciplinary Authority while imposing punishment. As charge under Clause 28.18 is proved, punishment of dismissal deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No. 2.

14. In the result, award is passed as under:-

- (1) The action of action of the Agent, Ambara colliery of WCL, PO Ambara, Distt. Chhindwara (MP) in terminating the services of Shri Sakarlal S/o Shri Darshan Tub Loader of Ambara Colliery w.e.f. 3-11-97 is not proper and legal.
- (2) Punishment of dismissal of workman is modified to compulsory retirement
- (3) 2nd party is directed to give all retiral benefits to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

का.आ. 214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 91/12) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/91/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 18.01.2017.

[No. L-22012/91/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/91/2012

Shri Pancham Suryavanshi,
General Secretary,
Khadan Mazdoor Sangh, Lal Jhanda (AITUC),
PO Pathakhera, Distt. Betul,
MP

...Workman

Versus

General Manager,
Western Coalfields Limited,
PO Pathakhera, Distt. Betul,
MP

...Management

AWARD

Passed on this 16th day of August 2016

1. As per letter dated 31-7-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/91/2012-IR(CM-II). The dispute under reference relates to:

“Whether the claim of the Union that Shri Sahuchand Chourey’s wages has not been fixed as per National Coal Wage Settlement No. 6 by Western Coalfields Ltd. is correct? What relief, the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman failed to participate in reference. Ist party is proceeded exparte on 8-2-2016.

3. 2nd party filed Written statement. 2nd party contends that Ist party workman was working as Sub Station Attendant at Regional workshop, Pathakhera Area. His services are covered by NCWA VI. The dispute is raised for proper pay fixation when dispute was raised, management constituted committee consisting of Sr G.R.Tiwari. said committee examined pay fixation as per existing rules and came to conclusion that pay fixation of workman is correct. In pursuance of I.I.No.1 Clause 2.11.1 of JBCCI of NCWA-VI, Ist party workman along with other time rated employees in Regional workshop who have remained in same category/ grade for 8 years or more where upgraded in their next higher category grade w.e.f. 1-1-02 vide order dated 21-6-02. As per note sheet No. 466 dtd 8-8-02, pay fixation of employees who were drawing wages as per NCWA V. the particulars of fixation of employees who were drawing wages as per NCWA V, the particulars of fixation dated 27-7-02 is shown in Annexure M-5, the basic pay fixation from NCWA V to NCWA VI is shown in Exhibit M-6. The anomaly fixation of workman is shown in Exhibit M-7. The fitment in revised scale of pay for time rated monthly pay scale is shown in Exhibit M-8. The particulars of calculation are shown in Exhibit M-1. In the light of NCWA, guidelines for fixation are given on 5-1-2001. Annexure M-10 I.I.No.4 was issued with regard to pay scale of supervisory grade under NCWA VI Annexure M-11. The application submitted by workman for sanction of conveyance reimbursement is produced at Exhibit M-12. The dispute of pay fixation of workman was forwarded to headquarter for verification. Vide letter dated 3-12-08, headquarter informed General Secretary of AITUC that pay fixation of workman was examined and found correct.

4. 2nd party filed affidavit of evidence of witness Shri Abhijeet Mandal supporting contentions in Written Statement.

5. Ist party not participated in reference proceeding. I find no reason to disbelieve the unchallenged evidence of management's witness. As 2nd party has not participated in reference, the dispute under reference could not be decided on merit. Accordingly I record my finding in the reference.

6. In the result, award is passed as under:-

“The dispute under reference could not be decided on merit as workman failed to participated in reference. Workman is not entitled to any relief.”

R. B. PATLE, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

का.आ. 215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 90/12) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/90/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

S.O. 215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 18.01.2017.

[No. L-22012/90/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/90/2012

Shri Pancham Suryavanshi,
General Secretary,
Khadan Mazdoor Sangh, Lal Jhanda (AITUC),
PO Pathakhara, Distt. Betul,
MP

...Workman

Versus

General Manager,
Western Coalfields Limited,
PO Pathakhara, Distt. Betul,
MP

...Management

AWARD

Passed on this 16th day of August 2016

1. As per letter dated 31-7-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/90/2012-IR(CM-II). The dispute under reference relates to:

“Whether the claim of the Union that Shri Bhojraj Sharma is eligible for wages as Timber Mistry Category Grade IV is justified? What relief, the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman failed to participate in reference. Ist party is proceeded exparte on 8-2-2016.

3. 2nd party filed Written statement. 2nd party contends that Ist party workman was working as Timber Mistry at Sutpura Mine No.II. He had submitted medical report for providing him light job in surface. Accordingly he was offered post of General Mazdoor Category I for light duty on surface for a period of one month w.e.r. 18-0-88 to 17-1-88. It was specifically mentioned that he was allowed light duty on surface for above said period. That after completion of period of light duty, he will have to go to his original job without further notice. Thereafter workman submitted option to change his designation from General Mazdoor Category IV to General Mazdoor Category I. in light of said request, office order dated 14-1-89 was passed. As per said order, Sr, Personnel Manager Satpura Sub Area submitted notesheet dated 28-10-88 and subsequently recommended by Supdt. Of Mines, Surpura Mine No.II to change designation of Bhojraj Sharma, Timber Mistry Category IV to General Mazdoor Category I. the authority was pleaded to accept his proposal and agreed to change designation of Bhojraj to General Mazdoor Category I allowing to work on surface. He was to be paid wages of General Mazdoor Category I. directions were also issued to make necessary corrections in record. Vide office order dated 24-4-89, workman was directed to report for duty to Dy.CE(E&M). workman submitted representation for his original wages. Vide order dated 26-3-92, workman was specifically told that it was choice to opt for light job at surface by accepting post of General Mazdoor Category I with the pay scale of Timber Mistry cannot be granted. On above contentions, 2nd party contented that workman is not entitled to pay scale of timber mistry.

4. 2nd party filed affidavit of evidence of witness Shri Abhijeet Mandal supporting contentions in Written Statement.

5. Ist party not participated in reference proceeding. I find no reason to disbelieve the unchallenged evidence of management's witness. As 2nd party has not participated in reference, the dispute under reference could not be decided on merit. Accordingly I record my finding in the reference.

6. In the result, award is passed as under:-

“The dispute under reference could not be decided on merit as workman failed to participated in reference. Workman is not entitled to any relief.”

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 01/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/113/1998-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in Annexure, in the industrial dispute between the management of FCI and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/113/1998-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 01/1999

Employer in relation to the management of Food Corporation of India, Dhanbad

AND

Their workmen

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri A.K. Sinha, Advocate

For the workman : Shri R.R. Ram, Rep.

State : Jharkhand

Industry : Food

Dated : 17/10/2016

AWARD

By order No. L-22012/113/98-IR (C-II) dated 15/12/1998, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the union for regularisation of Sh. Prabhu Yadav and 47 others DPS/Casual Labours (List enclosed) of FCI Dhanbad for departmentalisation by FCI Dhanbad is justified? If yes, to what relief are the workmen entitled?”.

ANNEXURE**List of workman**

Sl. No.	Names	Sl.No.	Names
1.	Shri Prabhu Yadav	2.	Shri Umesh Ram
3.	Shri Naresh Ram	4.	Shri Sarju Yadav
5.	Shri Rameshwar Yadav	6.	Shri Ram Narayan Yadav
7.	Shri Sukhdev Yadav	8.	Shri Doman Yadav
9.	Shri Yamuna Yadav	10.	Shri Shankar Yadav
11.	Shri Ram Sharan Yadav	12.	Shri Sohan Yadav
13.	Shri Suresh Yadav	14.	Shri Vijay Yadav
15.	Shri Branmadeo Yadav	16.	Shri SitaRam Yadav
17.	Shri Yogendra Yadav	18.	Shri Mahipal Yadav
19.	Shri Shankar Bhushan Yadav	20.	Shri Baban Prasad
21.	Shri Yogendra Mahto	22.	Shri Krishna Ram
23.	Shri Ramesh Yadav	24.	Shri Jawahar Yadav
25.	Shri Ramdeo Ram	26.	Shri Raj Kumar Rai
27.	Shri Prabhu Yadav –II	28.	Shri Rajendra Pr. Yadav
29.	Shri Upendra Yadav	30.	Shri Satyandra Mahto
31.	Shri Anil Pd. Yadav	32.	Shri JaiRam Yadav.
33.	Shri Rameshwar Yadav	34.	Shri Balam Yadav
35.	Shri Janki Yadav	36.	Shri Karu Yadav
37.	Shri Bishundeo Yadav	38.	Shri Guleshwar Ram
39.	Shri Ram Kumar Rai	40.	Shri Suresh Prasad
41.	Shri Prakash Yadav	42.	Shri Ramesh Prasad
43.	Shri Mahes Yadav	44.	Shri Narayan Yadav
45.	Shri Umesh Yadav	46.	Shri Bhola Prasad
47.	Shri Yagendra Prasad	48.	Shri Tapeswar Yadav.

2. The case is received from the Ministry of Labour on 12.01.1999. After receipt of reference, both Parties are noticed, the Sponsoring Union files their written statement on 17.02.1999. But the management files written statement-cum- rejoinder on 30.08.99. One witness each side examined and documents of workman marked as W-1 to W-3.
3. The case of the workman is that Shri Prabhu Yadav and 47 others workmen had been working as permanent workmen against permanent vacancy in food Corporation of India at Dhanbad and they have been working in permanent nature of job under the direct control and supervision of the management for the benefit of the management and they had put in more than 240 days attendance in each calendar year.
4. It is also submitted by the workmen that they had been performing the job of unloading bags from the wagon and placing those bags in the place for staking as well as they were filling wheat in those bags and staking them properly. They had been rendering service to the management from 1982 continuously till Dec. 1988.
5. It is further submitted by the workman started demanding regularisation and payment of wages and other benefits at par with other permanent workmen then and there the management stopped them from coming to service without assigning any reason and in utter violation of the principles of natural justice as well as without following the mandatory provision of law.
6. The Union as well as concerned workmen represented before the management several times against the illegal and arbitrary denial of regularisation and termination from service and the management advised and assured to the concerned workmen to wait patiently. On the alleged ground the matter has been referred to headquarter for decision but ultimately the management did not regularise the services of the concerned workmen nor reinstated, hence Industrial dispute arose.
7. On the other hand the case of the management is that the sponsoring union was never in existence in the establishment of FCI at any period of time and for the first time it has sponsored the present case with some ulterior motive to establish its foothold in the establishment of Corporation.
8. It is also submitted by the management that the Sponsoring union did not produce the identity cards or employment letters or verification certificates in respect of the concerned persons to establish their genuinity as well as rereationship of employer-employee between the management and concerned persons, do not arise.
9. It is further submitted by the management that the concerned persons were never the workmen of the management or any contractor, the question of producing goods for the benefits of management did not and cannot arise. It is also submitted that the regularisation of the concerned persons did not and cannot arise.
10. This is a case of regularisation of 47 workmen including Prabhu Yadav in FCI, dhanbad. The case of the workmen is that they were engaged for filling food grain in gunny bags, which is a permanent nature of work. But the management without regularising them removed them from service. They filed photocopy of attendance register which is marked as exhibit but certain payment receipts/vouchers has filed to determine the claim that who paid them wages. They also say that they were engaged by the management but they are unable to files any appointment letter or identity Card of FCI that they were working .
11. As per evidence of Sri Upendra Yadav (WW-1) , say that “ We have got no Identity Card to Show that we were working at FCI, Dhanbad. He also says that we have got no appointment letter to show that we were working at FCI,Dhanbad.
12. It is said that they were appointed by Ambika Prasad but one Ambika Singh was examined by the management. On confrontation of signature, he denied the fact. In the absence of insufficient evidence, this Tribunal unable to regularise the workmen.
13. Considering the facts and circumstances of this case, I hold that the demand of the union for regularisation of Sh. Prabhu Yadav and 47 others DPS/Casual Labours (List enclosed) of FCI Dhanbad for regularisation by FCI Dhanbad is not justified, Hence they were not entitled to get any relief. (Claim disallowed).

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 123/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/47/1999-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/47/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 123 OF 1999

PARTIES :

The management of B.C. Incline of Shodpur Area of M/s. ECL

Vs.

Sh. Badan Majhi

REPRESENTATIVES :

For the management : Sri P. K. Goswami, Learned Advocate

For the union (Workman) : Sri Rakesh Kumar, President of the Union

Industry : Coal

State : West Bengal

Dated: 30.12.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/47/99-IR(CM-II)** dated 29.07.1999/03.08.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of B.C. Incline of Shodpur Area of M/s. ECL in dismissing Sh. Badan Majhi, Underground Loader from services is legal and justified? If not, to what relief the workman is entitled?”

1. Having received the Order **NO. L-22012/47/99-IR(CM-II)** dated 29.07.1999/03.08.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **123 of 1999** was registered on 18.08.1999/03.10.2001 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.
2. Case called out. Both parties are absent.
3. On perusal of the case record it is found that the workman, Sh. Badan Majhi has expired and his heir is not traceable. Since the workman has expired and no one has filed substitution petition on behalf of the workman, the case is closed.
4. As such the case is closed and a ‘**No Dispute Award**’ is hereby passed accordingly.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 49/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/37/2011-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/37/2011-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/49/2011

The President/ Secretary,
Bhartiya Koyla Khadan Mazdoor Sangathan (BMS),
Qtr.No.MQ-111, Shakti Nagar, SECL,
Gevra Area, PO Gevra, Distt. Korba,
Korba (Chhattisgarh)

...Workman/Union

Versus

Chief General Manager,
Central Excavation Workshop of SECL,
Gevra Project, Distt. Korba (CG)
Korba (Chhattisgarh).

General Manager (P&A),
SECL, HQ Seepat Road,
Distt. Bilaspur (Chhattisgarh)

...Management

AWARD

Passed on this 24th day of November, 2016

1. As per letter dated 9-6-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/37/2011-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of SECL, Central Excavation Workshop, Gevra Project, Distt. Korba (CG) (i) in reducing the basic pay at time of joining as clerical Grade III w.e.f. 1-1-1998 (ii) in not giving the arrears for working in different category (General Mazdoor to Mining Time Keeper) since 28-12-92 to 2003. In respect of Shri Roop Narayan Rathore, Clerical Grade III of Central Excavation Workshop, Gevra Project, Distt. Korba is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim on 8-2-2012. Case of Ist party workman is that he was apprentice from 19-2-91 to 27-12-92. Thereafter he was working as General Mazdoor Category I from 20-12-92. He was working in Category II from 10-12-93 to 31-12-96. He was working as excavation plant greaser helper (EPGH) from 1-9-97 to 31-12-97. From 1-1-1998, he was appointed as clerk Grade III. That since 2812-92, though appointed as General Mazdoor, he was doing work of clerk. During 1992 to 2003, he was working as MTK. Though he was working as MTK during 1992 to 2003, he was not regularized as time keeper/ clerk Grade II. He was not given benefit of pay protection. Workman submits that other similarly situated employees working at SECL Hqr. Bilaspur were regularized with pay protection.

3. Workman submits that as per order dated 25-12-98, he was allowed benefit of clerk Grade III w.e.f. 1-1-98. His pay was reduced and initial basic pay of clerk was allowed to him. At the time of appointment as clerk Grade III, his basic pay was Rs.3855.70. his pay was fixed at initial stage of clerk Grade III Rs.3545/-. That in letter dated 17-11-09 issued by SECL, Bilaspur while absorbing/ regularizing category employees to monthly rated clerk Grade, the pay is fixed calculating monthly income on the basis of per day wage and thereafter pay is fixed as per fitment charge of monthly rated employee. Therefore there is no deduction in earlier wages of employee. However the wages of workman were reduced after violating said letter. That similarly situated employees Shyam Manohar Parthe and Sanjay Sihote posted at Hq. SECL, Bilaspur were given pay protection as per order dated 19-11-97. Workman was denied such benefit. Shri G.K.Ram, Devak Singh, Umesh Sihote, Neel Singh Parihar, Babulal, A.Shankaran, Rohit Kumar Mishra, K.S.Nigotra, S.N.Giri Babulal Khunte and Janbastin Joseph and other employees allowed pay protection by SECL vide above order dated 19-11-97 and 7-8-06. Workman was denied said benefit. Above contentions are reiterated by workman and submits that he had submitted representation to the management. In reply given by management, it was contented that workman cannot be equated with other similarly situated employees is arbitrary. He cannot be denied of above said fact on the basis of mistakes committed by the management. Ist party workman submits that reduction of his basic pay is illegal. Workman prays for proper pay fixation and claims the amount after proper fixation with 18 % interest.

4. 2nd party management filed Written Statement on 7-4-2012 opposing claim of workman. 2nd party submits that terms and conditions of employees working in coal industry are covered by various settlements NCWA. Cadre scheme has been formulated under NCWA for promotion channel. Promotion is given on recommendations of DP subject to availability of sanctioned post and administrative requirements. There is no cadre scheme for general mazdoor category. As and when vacancy arose in different cadre, opportunity is granted to the general mazdoor category. For sometime management permits them to avail expenses for being selected for different categories management invites application from eligible candidates including departmental candidates as and when vacancy arose for different posts as clerk Grade III, mining sirdar etc. The candidates who desire for being selected to such different category where there is a cadre scheme for career growth apply with the management. Selection committee for departmental candidates are given offer to compete in such selection process. The candidates after selection process are given appointment orders. There is no compulsion on part of departmental candidates selected for the post/ cadre to join new assignment. It is option of such employees complying for the post. Persons who are selected for the post. Their pay is fixed as per pay scale provided under cadres scheme. Departmental candidates accept selection post for their career growth. Unless they enter into particular cadre scheme with initial post, there cannot be any future promotion. Departmental candidates assume their new assignment and get career growth by promotions as per the cadre, the persons who have been selected to new assignment, may be at loss at the initial stage but they have a bright career growth in future. Looking to the said career growth, the existing employees apply for selection to other cadre such as clerical cadre, mining supervisory cadre etc. generally the persons who enter in services as General Mazdoor come forwarded for being selected to other cadre through the selection committee/process with a view to avail long term benefits. Departmental candidates selected to different cadres, question of their pay protection to different cadres, question of their pay protection doesnot arise. Sometimes initially they may be getting less wages when they are selected to clerical cadre. Under these circumstances, question as to whether they should be given pay protection while their selection is made in different cadre for purpose of career growth came for consideration.

5. 2nd party reiterates that service conditions of coal mine employees are covered by NCWA which doesnot provide pay protection to the employees selected to different cadre. That sub-Area Manager, General Manager, Chief General Manager of the Area are not empowered to create pay protection to any employees contrary to NCWA. Provisions of NCWA, standing orders of the company governs services of the employees. Management cannot discriminate employees working in one area with employees working in different area of the company the question of pay fixation and fitment into the new payscale on recruitment of particular post is to be considered on basis of service conditions and settlement in force. Provisions of NCWA whether employee working on daily rated or piece rated basis upto seek direct recruitment to a post carrying the pay scale they cannot have any pay protection and will be fixed in the pay scale prescribed for the aforesaid post. It is not policy of the company that persons selected for post of General Mazdoor Category- I to any other cadre, their pay will be protected, there will be compulsion on employees who have been selected to other cadre is bound to resume their new assignment. The provisions of NCWA, cadre scheme is uniformly

applicable to the entire working class in coal industry irrespective of area and company. Management cannot favour any person violating provisions of service conditions which may be violative of Article 14,16 of the constitution.

6. 2nd party further submits that pay protection was given to selected clerk Grade III contrary to provisions of NCWA-III, cadre scheme. Such mistakes should not be permitted to be continued. 2nd party has referred to ratio held in various cases by Hon'ble High Court in R/79/94 and Writ Petition 828/97 in the matter of Makhanlal. 2nd party submits that workman was apprentice from 1-9-91 to 27-12-92. Vide office order dated 26-12-92, Ist party workman along with others was selected as ITI apprentice was offered appointment of General Manager Category I. from 10-12-93 to 31-12-96, Ist party workman was in Category II. From 1-1-97 to 31-12-97 he was working as DPGH. As per order dated 12-1-95 workman along with others was promoted to SEP trainee in Category II. Vide order dated 1-1-97, workman as given post of DPGH along with Grade E. vide order dated 25-12-98 workman was selected to the post of clerk Grade III. His name was at Sl.No.24. 2nd party denies that workman was working as Clerk Grade I from 28-12-92 till year 2003. Work of MTK is not job of clerk Grade II, promotion is managerial function. Workman cannot claim regularization for the post of time keeper/ clerk Grade II. 2nd party denies that SECL Hqr regularized with pay protection to similarly situated workers. It is denied that the similarly situated employees are given pay protection. It is further submitted that if management has committed mistake by granting pay protection to any employees contrary to guidelines, mistake can be corrected, it doesnot give right to any employee to claim based on benefit given to others by mistake. On such ground, 2nd party prays for rejection of claim.

7. Ist party filed rejoinder on 27-10-2013 reiterating its contentions in statement of claim. Ist party submits that there is no provision for reduction of basic pay without imposing penalty. It is wrong that applications for departmental; candidates are invited. It is denied that Sub Area Manager, General Manager, Chief General Manager are not competent to take decision beyond provisions of NCEWA, standing orders etc.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the action of the management of SECL,
Central Excavation Workshop, Gevra Project,
Distt. Korbna (CG) | (i) In Negative |
| (i) in reducing the basic pay at time of joining as clerical
Grade III w.e.f. 1-1-1998 | |
| (ii) in not giving the arrears for working in different category
(General Mazdoor to Mining Time Keeper) since 28-12-92
to 2003 in respect of Shri Roop Narayan Rathore, Clerical
Grade III of Central Excavation Workshop, Gevra Project,
Distt. Korba is legal and proper? | (ii) In Affirmative |
| (iii) If not, what relief the workman is entitled to?" | As per final order |

REASONS

9. Point No.1,2- The term of reference pertains to reduction of pay of Ist party workman at time of joining clerk Grade III from 1-1-98, not giving arrears in work for different category/ General Mazdoor to mining time keeper for the period 28-12-92 to 2003 to Ist party workman. Management has opposed claim of Ist party workman under the Written Statement. Ist party workman filed affidavit of his evidence. In his affidavit of evidence, workman has stated that since December 1992, he was appointed as General Mazdoor. However during the period 1992 to 2003, he was working as MTK, time keeper. As per job nomenclature and categorization of coal mine employees, clerk Category I, II, he was not regularized. From 1-1-98, he was appointed as clerk Grade III however his basic pay was reduced, his two increments were reduced without holding any enquiry. During the period 1-9-91 to December 1992, he was apprentice. From 10-12-92, he was appointed as General Mazdoor. He had submitted various representations to the management. Management had given misleading reply dated 29-3-2000. He had also submitted various representations. That as per order dated 19-11-97, Shri G.K.Ram, Devak Singh, Umesh Sihote, Neel Singh Parihar, Babulal, A.Shankaran, Rohit Kumar Mishra, K.S.Nigotra, S.N.Giri Babulal Khunte and Janbastin Joseph and other employees allowed pay protection by SECL. From evidence of workman, documents Exhibit W-45 to 59 are admitted in evidence. In his cross, workman says Exhibit W-51 to 59 were sent by him to General Manager, General Suptd. His applications were received by the officers. He was working as time keeper. Since June 12, he is working in Mahanadi project. He denies that Exhibit W-51 to 59 were not received by General Manager, General Suptd. He had not closed acquaintance with despatch clerk. In his further cross, workman says the information supplied to him under RTI Act was not related to SECL., he denies that Exhibit W-45 was not given to General Suptd. he denies that Exhibit W-46 certificate was not

given by the management. Pay fixation was made on Ajay Kumar, clerk Grade III from 1-1-93, he was appointed as clerk Grade III. He admits that he was initially appointed on post of General Mazdoor. His educational qualification is LLB and diploma in personal management. The services are covered by standing orders, NCWA. E denies that there is no cadre scheme for General Mazdoor. Workman has shown readiness to produce cadre scheme to General Mazdoor but said document is not produced on record. Workman admits that post of Clerk Grade III, Mining Sirdar, Shot firer, applications are invited by the department. After selection, appointments are given. Workman says he would produce order of his appointment as clerk Grade III. The order is on record. In his appointment order, pay scale was mentioned. Workman says that his pay was not fixed. He admits that pay is fixed under the pay scale. That management cannot change service conditions in violation of NCWA, standing orders. Ist party workman admitted documents Exhibit M-1 to M-5. He admits that from 12-1-95, he was given ACP training. In his further cross, workman admits that order in writing was not given to him for MTK. The post of MTK is in Category II. He was given promotion of clerk Grade II in 2003., the pay scale of clerk Grade II & MTK is same. From the date of his promotion as clerk Grade II, he was given pay scale of said post. In the year 2007, he was promoted as clerk Grade I, in 2012 he was promoted as clerk special Grade. In June 2012, he joined NCL as welfare officer training on selection. Thereafter he was given posting in NCL evidence of Ist party workman about his pay was fixed at Rs. 3445/- as clerk Grade III remained unchallenged. At the time of joining as clerk Grade III, his basic pay was Rs. 3885.70 is not challenged. Evidence of Ist party workman that as per order dated 19-11-97 Shri G.K.Ram and others were given pay protection is also not challenged in cross-examination.

10. Management's witness Shri GLN Durga Prasad filed affidavit of his evidence supporting contentions of management in Written Statement. That promotion is given on recommendation of DP. Management invites applications from eligible candidates including departmental candidates when vacancy arose for post such as Clerk Grade II, Mining Sirdar, Shot Firer etc. upon selection of employees in different cadre for which they voluntarily agreed to, no pay protection can be granted. The employees working on daily rated or piece rated ought to seek direct recruitment to a post carrying the pay scale, they cannot have any pay protection and will be fixed in the pay scale prescribed for the aforesaid post. Workman was initially selected under Apprentice. During 1-9-91 to 21-12-92, the service registers are maintained by the management. Workman was given Category I General Mazdoor from 28-12-92, Category II from 10-12-93 to 31-12-96. On 1-1-97 to 31-12-97, workman was given EPGH post. Vide order dated 1-1-97, workman was given ipost of EPGH along with Grade E. vide order dated 25-12-98, as per recommendations of Selection Committee, employees were designated as General Mazdoor, name of workman is at Sl.No. 24 as per said order, the pay fixation of workman was done and his pay was fixed at initial basic pay for post of Clerk Grade III. Management's witness in his cross says there is no cadre scheme for General Mazdoor. The promotion of General Mazdoor is made on recommendations of DP. Ist party workman was working as General Mazdoor Category I from 1992 from 10-12-93, Ist party was working in General Mazdoor Category II. Post of time keeper is covered as Clerk Grade III Management's witness admits job categorization – post of time keeper, clerk Grade II is provided. Workman was selected as Clerk Grade III. He was not allowed pay protection the order is produced at Exhibit W-6.

11. Documentary evidence by Ist party Exhibit W-1 to 15 are applications submitted to ALC, Bilaspur by workman regarding his grievances. Exhibit W-45 is application submitted to General Suptd dated 12-1-94 for requesting to depute him to technical job at Shop or clerk for development of his career. Exhibit W-8 is certificate dated 6-11-96 issued for purpose of submitting application as per UPSC. Those documents are not helpful, controversy between parties is order dated 19-11-97 Shri G.K.Ram and 20 others were regularized on the post of Clerk Grade II on recommendations of Committee were allowed pay scale Rs.1826-60-2666. Exhibit W-6 is order dated 25-12-98. Workman and others were appointed as Clerk Grade III on probation for six months. The condition is clearly provided they will not be entitled to any pay protection. Exhibit W-8 is copy of order dated 19-11-97. Shri Shyam Manohar Parthe and Sanjay Sihote were appointed as clerk Grade III. Exhibit W-9 is document about fixation of pay of Shyam Parthe multiplying daily wages by 26 and fixing his pay at Rs.2126 as per Exhibit W-10, the pay of Sanjay was also fixed. Multiply his daily wages by 26 and fixed Rs.1948/-. Those document shows regularization. The pay is fixed on regularization. Exhibit W-11 is letter dated 21-6-2010 by General Manager, Gevra area denying pay protection to workman and other persons appointed with him in Clerk Grade III. Exhibit W-12, 19, 20 are copies of applications submitted by workman, Exhibit W-13 is copy of order dated 25-12-98 i.e. Exhibit W-6 already referred. Exhibit W-14 is office memorandum dated 20-10-09. The Committee after discussion decided to allow pay protection to mining Sirdar, Assistant Foreman at various levels selected after 1-1-08. Exhibit W-17 is letter dated 30-4-96 issued by Director (P) prohibiting deployment of any category of workman to the clerical cadre without approval of the authority. Exhibit W-18 is letter dated 5-6-96 shows there was surplus clerical staff in different areas. That General Manager is authorized to place any of the category of workers to place for clerical jobs. Exhibit W-48 shows list of new projects. Exhibit W-39 is order dated 2-1-01 promotion of 50 category to employees to EPGH, name of workman appear at Sl.No.43. Exhibit 40 is order dated 20-9-98. Promotion of employees on recommendation of DPC to the post of Sr.EP Category II. Exhibit W-42 is order of promotion dated 4-7-04 of Shyamlal and Amarnath to the post of EPGH Grade E. Exhibit W-51, 43, 52, 53, 54, 55, 56, 57 are applications submitted by workman time to time. Exhibit W-44 is also

application submitted by workman regarding his grievance. Exhibit W-45 is note about discussion between management and Union dated 16-9-05. The documents Exhibit W-43 to 55 pertains to grievance of workman, on those applications, claim of Ist party workman cannot be decided. The documents Exhibit W-49 letter dated 22-05-2010 shows that as per scheme of the company dated 17-7-84, the selected clerk, his pay be fixed multiplying his wages by 26 if found less than minimum pay scale. The pay should be fixed at minimum pay scale if the pay is found more than minimum pay scale, pay should be fixed at the nearest pay. Document Exhibit 49 only supports the claim of workman.

12. Management has produced evidence of Ist party workman that pay protection was granted to similarly situated employees working at headquarter as per letter dated 19-11-97, is not challenged in his cross-examination the claim of workman is also supported by document Exhibit W-49. As per document Exhibit W-2,9 & 10, the pay of Shri Shyam Manohar Parthe and Sanjay Sihote was fixed my multiplying their daily wages by 26 and higher pay scale was fixed than the initial pay scale.

13. Learned counsel for 2nd party Shri A.K.Shashi submits that said pay was wrongly fixed, how the pay was wrongly fixed is not explained by witness of the management's witness fixation of pay of Shri Shyam Manohar Parthe and Sanjay Sihote is supported by documents Exhibit 49. Evidence on record is clear that after Ist party was appointed as Clerk Grade III on 1-1-98, the denial of pay protection to him in the order is contrary to Exhibit W-49 and as such illegal. So far as claim of workman w.r.t. difference of wages for working as MTK from 1992 to 2003, workman in his cross has admitted he was not given order in writing for working as MTK. Evidence of management's witness is clear that for providing experience for career advancement, employees are given opportunity to work on category post. When Ist party workman was not given appointment in writing to work as MTK, on its basis his claim for arrears of wages cannot be accepted. For above reasons, I record my finding in Point No.1(i) in Negative and (ii) in Affirmative.

14. In the result, award is passed as under:-

- (1) The action of the management reducing the basic pay at the time of joining as clerical Grade III w.e.f. 1-1-1998 is illegal.
- (2) Action of the management not giving the arrears for working in different category (General Mazdoor to Mining Time Keeper) since 28-12-92 to 2003 to the workman Shri Roop Narayan Rathore is proper and legal.
- (3) 2nd party is directed to fix pay of Ist party workman since his appointment as Clerk Grade III i.e. 1-1-98 multiplying his basic wages by 26 and fixing his pay as per directions in letter dated 22-5-2010 issued by Dy.Chief Personal Manager (Exhibit W-49). After accordingly fixing the pay, arrear if any be paid to the workman within 30 days from the date of notification of this award.

In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 173/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/199/98-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 173/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/199/98-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/173/99**

General Secretary,
Pench Kanhan Koyla Khadan Karmachari Sangh,
PO Damua, Distt. Chhindwara (MP)

...Workman/Union

Versus

Manager,
Nandan Mine No.1 of WCL, PO Damua,
Distt. Chhindwara (MP)

...Management

AWARDPassed on this 11th day of August, 2016

1. As per letter dated 22-4-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/199/98/IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Nandan Mine No.1 of WCL, Chhindwara Distt. In terminating the services of Shri Pirmoo S/o Shri Pancham, Driller w.e.f. 20-6-95 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 3/1 to 3/4. Case of Ist party is that he was appointed as General Mazdoor, he was promoted to job of Dresser cum Driller Category IV. As per nomenclature, job description and categorization, job of dresser has been categorized in Cat III and job of driller in Cat IV. Both categories are different. His services were utilized for both the jobs in once time. That he had suffered from arthritis. He was referred to Kanhan Hospital and also received treatment for Arthritis in Burkui Hospital, Pench Area. Management had knowledge about workman receiving treatment in Kanhan Hospital, Burkui Hospital, Nandan dispensary is under control of Nandan Mine No.I. Both kanhan and Burkui are under control and supervision of the management. That he submitted application for voluntary retirement as he was suffering from Arthritis. However his request for voluntary retirement dated 20-11-92 was not accepted.

3. That charge sheet was issued to him on 27-7-94 for unauthorized absence. He was not given reasonable opportunity for his defence. Enquiry Officer was acting as prosecutor. The findings of Enquiry Officer are erroneous. Workman is punished on the finding of Enquiry Officer. That Enquiry Officer not followed principles of natural justice. Punishment of dismissal imposed against him is illegal. On such ground, workman prays for reinstatement with backwages.

4. 2nd party filed Written Statement at Page 6/1 to 6/3 opposing claim of workman. 2nd party submits that Ist party workman was working as Driller. Since his appointment, he was habitual absentee and remained consistently absent without sanctioned leave or permission. In 1991, he worked for 89 days, in 1992 for 74 days, in 1993-94 he did not work for a single day. That the absence of workers adversely affects to production and needs to be seriously dealt. Chargesheet was issued to workman for unauthorized absence during the period 1-1-93 to 31-12-93. Workman did not submit reply to charge sheet. Shri Ravi Prasad was appointed as Enquiry Officer and Mr. H Rehman was appointed as Management Representative. Detailed enquiry was conducted w.r.t. charges against workman. Enquiry was fixed on various dates. Ist party workman had appeared with his co-worker on 4-9-94, enquiry was adjourned to 5-9-94. Though the workman alongwith his co-worker appeared in the enquiry, management representative produced record w.r.t. unauthorized absence of workman. Record was shown to workman. Thereafter his statement was recorded. It is reiterated that enquiry was properly conducted. Considering the findings of Enquiry Officer that his guilt was proved, Ist party was terminated. Action of the management is proper and legal.

5. Ist party filed rejoinder at Page 7/1 to 7/3 reiterating his contentions in statement of claim.

6. On 3-3-14, learned counsel for Ist party submitted that he is not challenging legality of enquiry proceeding therefore legality of enquiry need not be decided. It is apparent that enquiry conducted against workman is valid.

7. Considering pleadings on record and legality of enquiry is not challenged by Ist party, the points which arise for consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. As discussed above, legality of enquiry is not disputed by workman. The question remains for consideration is whether the charges alleged against workman are proved from evidence in Enquiry Proceedings. The charge sheet was issued to workman. Exhibit M-1 pertains to unauthorized absence without satisfactory explanation for the period 1-1-93 to 31-12-93. In enquiry proceeding dated 30-8-94 at Page 7, Ist party workman admitted charges against him explaining that he was absent from duty because of his illness. At page 13 of the Enquiry Proceedings, management representative produced certificate about absence of Ist party workman worked for 89 days in 1991, 74 days in 1992 and did not work any day in 1993-94. Statement of workman was recorded at Page 15 of the Enquiry Proceedings. Ist party workman had explained that he was suffering from Arthritis. He had submitted application for VRS but his request for VRS was not accepted. Evidence on record is clear that workman had not submitted leave application about his absence from duty. He had not received treatment in colliery hospital. As per the statement of workman in Enquiry Proceedings, the evidence in Enquiry Proceeding is sufficient to establish the charge of unauthorized absence. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- In view of my finding in Point No.1 charge against workman are proved, workman was unauthorisely absent from 1-1-93 to 31-12-93. Workman in his statement in Enquiry Proceeding had explained that he requested for VRS but his request was not accepted. Workman was suffering from Arthritis and he was unable to work. While imposing punishment of dismissal, above aspects were not considered. Ist party workman was in employment of 2nd party for 16 years as per evidence of Union Representative B.N.Tripathi. considering the proved charges for unauthorized absence explained by workman that he was suffering from Arthritis, he submitted application for VRS, his request was not accepted. After issuing chargesheet, the punishment of dismissal from service imposed against workman appears harsh. Considering the evidence on record, punishment of dismissal deserves to be modified to compulsory retirement. Accordingly I record my finding in point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) Punishment of dismissal is modified to compulsory retirement. 2nd party is directed to allow retiral benefits to Ist party permissible under rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 92/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/89/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/89/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/92/2012**

Shri Pancham Suryavanshi,
General Secretary,
Khadan Mazdoor Sangh, Lal Jhanda (AITUC),
PO Pathakhera, Distt. Betul,
MP

...Workman

Versus

General Manager,
Western Coalfields Limited,
PO Pathakhera, Distt. Betul,
MP

...Management

AWARDPassed on this 16th day of August, 2016

1. As per letter dated 31-7-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/89/2012-IR(CM-II). The dispute under reference relates to:

“Whether the claim of the Union that Shri Mohan Mokhade is entitled for career growth being ITI Certificate Holder as per wage settlement No. 6, II No. 32 since January 2000 is correct? To what relief, he is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman failed to participate in reference. Ist party is proceeded exparte on 8-2-2016.

3. 2nd party filed Written statement. 2nd party submits that workman failed to appear and filed his statement of claim. That Union has no locus standi to raise the dispute. Union has failed to establish that workers are its member. 2nd party further submits that service conditions of employees working in coal industry are governed by NCWA. I.I.No.32 issued by JBCCI standing orders and various settlements arrived from time to time. Claim of Union is opposed on I.I.No.32 issued by JBCCI. Union wrongly interpreted I.I.No.32 to achieve wrongful gain to workman. Circular with regard to I.I.No.32. Said circular had wide circulation. Validity of said circular was not challenged by any level of Unions. All area of WCL has implemented I.I.No.32 as per guidelines and circulars. Present Union Khadan Mazdoor Sangh has raised the dispute in respect of Pathakhera area only. To get wide publicity for membership mobilization.

4. The claimant workman was working as telephone operator. Te benefit of I.I.No.32 is available to workman working in electrical etc. cadre. Said benefit is not extended to telephone operators. Management vide letter dated 24-9-04 informed concerned Union that workman is not entitled to benefit under I.I.No.32. I.I.32 was issued one time arrangement for carrear growth of ITI person who completed 3 years on 31-12-99/ 21-12-00 in their existing category. In Para 20 of Written Statement, I I.No.32 Clause d is reproduced. Said clause provides the trainee in Categoroy III will be regularized in Category IV after completion of one year training in E&M Cadre. The trainees working in Excv will be regularized in Excv.D” that the E&M and Excv. Cadre for placement of ITI holders who were engaged in E&M Department and Exv. Department for which separate cadre scheme for promotion are given. It is reiterated that the Ist party is not entitled to benefit of I.I.No.32 as he was not working in E&M Cadre.

5. 2nd party filed affidavit of evidence of witness Shri Abhijeet Mandal supporting contentions in Written Statement.

6. Ist party not participated in reference proceeding. I find no reason to disbelieve the unchallenged evidence of management’s witness. As 2nd party has not participated in reference, the dispute under reference could not be decided on merit. Accordingly I record my finding in the reference.

7. In the result, award is passed as under:-

“The dispute under reference could not be decided on merit as workman failed to participated in reference. Workman is not entitled to any relief.”

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 29/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/17/2011-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/17/2011-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/29/2011

Shri Makhan Alias Madan,
S/o Shri Jeevan Goli,
R/o Vill- Salaiya,
Distt. Betul (MP)

...Workman

Versus

General Manager,
Western Coalfields Ltd.,
PO- Pathakhera,
Distt. Betul (MP)

...Management

AWARD

Passed on this 25th day of August 2016

1. As per letter dated 20-4-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/17/2011-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of M/s. Western Coalfields Limited in terminating the services of Shri Makhan alias Madan w.e.f. 11-7-89 is legal and justified? To what relief the workman concerned is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to appear in proceeding. He is proceeded exparte on 9-3-2015.

3. 2nd party filed exparte Written Statement contending that workman fails to appear and submit statement of claim as per Rule 10(B) of ID Rules. That Ist party was appointed as Badli Loader on 2015. He was posted at PK-II Mine. He was converted to piece rated Category-II. Workman was habitual absentee. He remained unauthorized absent for 3 years without sanctioned leave, letter dated 1-10-91 was issued to the workman. Workman did not give any response to said letter. Chargesheet was issued to him on 7-1-92 for unauthorized absence. Enquiry was conducted by Shri D.Chakravorty. Shri K.Anandan was appointed as Management Representative. Enquiry Officer held workman guilty of charges. The Competent Authority argued findings of Enquiry Officer. Workman was terminated from service vide order dated 23-4-92. Workman had submitted one application intimating about his acquittal by Hon'ble High Court on 28-3-01. Said information was received by management for first time. Workman was informed vide letter dated 11-6-01 about termination of his service for unauthorized absence. Workman filed Writ Petition No. 4530/08. Said Writ Petition was dismissed on the ground that workman had alternate remedy available under ID Act.

4. 2nd party submits that the workman was unauthorized absent for 3 years without intimation or sanctioned leave. His services were terminated on 22-4-92. Ist party workman was convicted for offence under Section 302 146 IPC. He was sentenced for life imprisonment in Criminal Case 169/89. The facts leading to the conviction are also narrated by 2nd party. Workman was acquitted giving benefits of doubts. Workman remained absent from duty without reasons on ground of principle of no work no pay, workman is not entitled to any monetary relief. The dispute is raised after long lapse of time is not tenable.

5. 2nd party filed affidavit of evidence of Shri B.S.B.Rao supporting contentions in Written Statement. Workman has not participated in reference proceeding. There is no reason to disbelieve evidence of management's witness. For reasons discussed above, action of the management is found legal.

6. In the result, award is passed as under:-

- (1) The action of the management terminating workman is legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 59/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/230/1992-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/230/1992-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/1995

General Secretary,
SKMS Union(AITUC),
PO- Chandameta,
Distt.- Chhindwara (MP)

...Workman/Union

Versus

Chief General Manager,
WCL, Pench Area,
Post- Parasia,
Distt.- Chhindwara (MP)

...Management

AWARD

Passed on this 21st day of November 2016

1. As per letter dated 24-3-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/230/92-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of Pench Area of M/s. WCL Ltd in denying to absorb and regularize the service of the 1940 workers (list enclosed) engaged by the contractors on transportation of coal from Shivpuri and other coalmines to B.G.Siding of WCL, Pench Area, is legal and justified? If not, to what relief the workmen are entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Secretary of SKMS Union submitted statement of claim at Page 2/1 to 2/9. Case of Ist party Union is that it is registered under Trade Union Act representing thousands of employees working in various coal mines. That coal mines in the country were nationalized in 1973. Pench area of WCL started up several new mines in 1975 namely Shivpuri open case, Vishnupuri, Sethia, Shivpuri, Chhindwa, Pench East and Rawanwara Khas. That coal which was produced in these mines were required to be transported to the BG Railway Siding for the purpose of sale and further movement to various destinations. There was no railway line from the mine to the railway siding and therefore coal mines out are to be transported by trucks from the pit mouth of the coal mines to BG Railway Siding. For purpose of transporting these coal from pit mouth of these collieries to BG Railway siding, the General Manager of Pench Area had employed departmental trucks as well as trucks through middlemen. Initially number of trucks used for transporting coal and the trucks employed through middle men were in equal proportion or departmental trucks were more. With a view to deny the workmen the benefits of various agreements and statutory liabilities, the departmental trucks were reduced and the transportation was being carried out through these middlemen. The method of adopting these middlemen and naming them contractors was only to deny the workmen employed in transportation of coal the benefits of certain agreements like NCWA and other benefits which the employees in coal industry gets as per the Mines Act. That agreements entered between various Union and management using middlemen as contractor workers who were working continuously for the purpose of loading, unloading, transportation of coal were denied these benefits which were given to regular departmental workers.

3. Ist party Union further contends in the truck apart from Driver there are cleaner, conductor and colliers who used to perform the duties of loading, unloading, leveling and other miscellaneous works connected with transportation of coal. When the trucks were used for the same nature of work, they were paid wages in accordance with NCWA. However workers who were shown to be working under the middlemen were paid less wages and other benefits were denied to them. It is alleged to be unfair labour practice and as a majority of workmen being denied the rightful claim for proper wages and other benefits. The Union in question were raising various demands objecting to the employment of middlemen and paying less wages. When oral complaint failed, written dispute was raised with the management and the management discussed the matter with the Union on 12-2-80 and 23-9-80. In these discussions, management stated that the matter would be considered and discussed later on. Subsequently the matter continued to be discussed repeatedly however no decision was taken and every time management used to promise that they will regularize the workmen and give them wages in accordance with the NCWA. However a plea was taken by the management that as the matter is of all India importance it has to be referred for arbitration. Somehow the management was interested in prolonging the issue on one excuse or other. Union further submits that when aforesaid matter was in progress, one Shri Ramjanam and 300 others were terminated. These employees were also working in connection with transportation of coal from colliery to BG Railway Siding. When the case of Ramjanam and others were not settled, the matter was referred for conciliation, it was registered as R/43/82. Ist party Union is relying on evidence and award passed in R/43/82 in support of its claim. It is further reiterated that the employees employed in truck for transport of coal in Railway Siding for purpose of sale person employed in mines as per Section 2(s) of Mines Act were bound to regularize the services of these workers. That steps were required to be taken under Section 48, Rule 57,77,77-A. Notice of hunger strike was given on 8-1-91 and discussion had taken place on 20-1-91.

4. That thereafter the so called contractors filed civil suit before Judge Class I Chhindwara challenging arbitration proceeding. Civil suit was dismissed on 10-4-91. That during pendency of matter, the management started terminating services of 2000 workers i.e. claimants. The claimants raised dispute before ALC sending telegram dated 20-4-91 requesting immediate intervention in the matter. Matter was taken up by ALC; Industrial Dispute was seized in conciliation. It is further submitted that Union submitted regular dispute around 30-5-91, same was received by management on 31-5-91. **That complete control vests in management. Workers employed on transport work of the management of WCL and they are infact employees of the management and contract is only empty formality.** The entire wages of workman are paid under contracts entered into without justification. That the workers are essentially used for raising of coal. That the employment of contractors is prohibited by Notification of 1975, middle man has no locus-standi. Workers are working continuously from 1975. That all workers are employee of management looking from any angle. Union further submits that persons employed are working in the premises of the management under their control and supervision for the work of the management. There is dispute regarding the employment and non-employment and terms of employment therefore it is an industrial dispute. Workers are employed in perennial nature of work continuously for last 15 years. NCWA prohibits employment of contract workers in coal industry. In coal industry, there is a specific agreement between management and Union prohibiting employment of contract labours in perennial nature of work. Work in the instant case being perennial nature comes

within prohibited category. By agreement, management had agreed not to employ contract labours. The workers employed by contractors shall be deemed to be employees of management of WCL. It is further submitted that there was no termination of services of the person by competent authority. Even if there is termination it will be in violation of Section 25-F of ID Act. On such ground, Ist party Union prays that 1940 persons employed be deemed as persons employed as per Mines Act and consequential relief to absorb them as regular employees with financial benefits.

5. Management filed Written Statement opposing claim of Union. At Page 4/1 to 4/18. Case of 2nd party management is that Coal Industry is one of the essential industry of the country. 2nd party has narrated the enactments by the Government of various acts after industrial revolution of regulation of 1948 for development and regularization of industries. Mines Act was enacted in 1952. Coal acquisition and development at 1957 Mines and minerals Development Act, 1957. Section 4 Mines and Mineral Regulation and Development Act 1957 placed control on all mining operations by direction that no person is to undertake any mining or mining operation. Section 18(1) of the said Act is clear that intention of parliament was to cover entire field and leave no scope for argument. That management submits necessary amenities are controlled and regulated through various statutory rules regulations under Mines Act Mines Rules. Coal mines pit head bath holes etc. Vocational Training Rules 1966 Coal Mines Labour Welfare Fund Act 1947, Mines Labour Welfare Fund 1957 details of the enactments are given in para 8 of the Written Statement also includes CL(R&A) Act 1970, maternity benefits rules etc.

6. That coal industry in India spread throughout the country. In 1973, Parliament enacted coal mines Act. After nationalization, coal industry in 1973, the administrative setup was reorganized with the Coal India and subsidiary companies WCL, SECL, BCCL, NCL etc. Pench Area of WCL is one of the loss making colliery – loss of Rs.40-55 crore per year since past 10 years. The area has huge manpower. There is surplus manpower, mines are very old and it is very difficult to work. Mining conditions are totally unfit for working. However being public sector undertaking, the management in the interest of society and the existing workers are continued to operate mines as welfare measure and social obligations.

7. 2nd party raised preliminary objection that dispute is raised pertains to 1940 workers were employed in the transportation of coal work in Motor vehicles. Therefore the workers employed in motor transport appropriate Government is State Government. The reference is not tenable. Similar R/21/97 was decided on 31-12-1980. This Tribunal is bound by earlier decision. That there is no employer employee relationship between management of WCL and claimants. The order of reference itself is clear that persons were employed by contractors on transportation of coal. The relationship is between employees and contractors. In absence of employer employee relationship, reference is not tenable. That Union is entitled to take up cases of its members. Union only permit membership of persons employed in mine. Workers connected with dispute being employees of contractors could not be members of the Union. Union is not entitled to raise the dispute. There is no evidence to show 1940 workers were members of the Union. Union cannot raise such dispute. The reference is extremely belated and management will be handicapped in dealing with such case after long time. Therefore it is submitted that reference is bad and preliminary issue on above objection be decided.

8. 2nd party reiterates the reference is illegal. It is not disputed that the Ist party union is registered. It is denied that thousands of workman employed in coal mine are represented by the union. Union has no authority to raise the dispute. Nationalization of coal mine in 1973 is not disputed. Management denies that coal produced in the mine was required to be transported to BG railway Siding for further movement to various destinations. It is not disputed that management had employed departmental contractors for transportation. Management had never employed any contractors through middleman. Considering the requirement of quantity of coal at Railway siding, management had given contract of transportation of coal from stockyard at mine to BG railway siding to different contractors. That the number of transport contractors and quantity of coal transported by them was varying time to time depending on requirements of Railway siding and availability of coal. That the management is bound to pay wages to their employees as per agreements entered from time to time as per statutory provisions. The persons working with contractors were employees of contractors. There was no relationship of employer employee between such persons and the management. Therefore no question arose of payment of less wages to such persons as the employees of contractors, not the employees of the management. It is denied that management engaged in unfair labour practice on any counts. It is denied that management denied rightful claim for wages and other benefits to majority of workmen employees of contractors. It is denied that management had promised that they will regularize services of employees of contractors and give them wages as per NCWA. As there was surplus manpower, there is no necessity for any additional manpower giving employment to contractor's employees doesnot arise. The contractor's employees have no statutory right for regularization of their services by management. W.r.t. award in R/43/82, it is submitted that matter is subjudice. Union is party to petition is well aware. It is denied that there were no contractor and reference wrongly speaks as employees of contractors. It is denied that the management used to take work from employees of contractors and their work was supervised by the management merely because coal mines are owned by WCL, it doesnot mean that employees of transport contractors were also working under control and supervision of Manager. It is denied that work

of transportation of coal is of perennial nature and all workers performing work of WCL without break. Rather the contractor's employees were doing work of contractors. The trucks of contractors were not allowed upto Bunkar. Infact they transported coal from yard of respective mines through mechanical means. Management is duty bound to see coal is not taken away by unauthorized person as it belong to WCL. Management is to receive price for coal. It is denied that WCL management is taking works from the workers drawing benefits out of the work done by them. The claimants are not employees of WCL. The work of contractor's employees carried out under control and supervision of the contractor and not by the management. It is denied that the employees employed on the truck for discharging of coal to Railway siding for sale are employees under Section 2(h) of Mines Act. That CL(R&A)Act 1970 not prohibit employment of contractor. There is no provision of principal employer has to regularise contractor's labour. It is held by the courts that there is no right for contractor's employees to be regularized by Principal employer. Hunger notice given by Union was unnecessary to blackmail and pressurize the management.

9. Management submits that Conciliation Officer took up the matter in conciliation without authority. Dispute should not have been entertained. It is denied that workers are infact employees of management and contractor is empty formality. It is denied that transportation of coal is prohibited by Notification of 1975. Persons are employed by contractors for their own work and they are not employed in the mines. They are not employees of the management. It is denied that the claimants were working continuously for 15 years. It is denied that NCWA prohibits such employment. Specific agreement alleged by union in coal industry have been denied. The contract for transport of coal was given to the contractors, the contractor employed the persons. It is responsibility of contractor to deal with their employees. WCL is subsidiary of coal India which is undertaking of Government of India. Management owns coal mine in Pench area. Production of coal varies from mines to mines and also from season to season. The coal mines transport coal to stockyard in the mine from its own transport system. There is no Railway siding near certain mines, therefore coal is required to be transported from yard to Railway sidings. The contractors M/s Trilok Singh Khanduja, Avtar Transport Company, M/S Bhogilal & Company, M/S Punjab transport company & M/S Coal Carriers were awarded contracts for transport. Loading of coal in dumpers were done mechanically at yard. In the same manner, unloading at railway siding was also mechanically done. Tripping trucks were filled with automatic unloading devices. The contractors were not required to employ any employee for loading unloading of the vehicles used for transportation. Employees of contractor were under their exclusive control. There was no employer employee relationship with the management.

10. 2nd party submits Government of India vide Notification dated 21-6-88 prohibited employment of contract labours in coal mines for specified job or selling of coal, coal loading and unloading overburden removal and earth cutting, cleaning of stone drifts and miscellaneous stone cutting. That the quarries in North east Coal field and Pench valley were excluded. Transportation of coal is not prohibited by said notification. While issuing notification under Section 10(2), various factors were required to be considered. The dispute under reference raised pertaining to absorption and regularization of services of claimants shown in the list engaged by contractors; as such the dispute pertains to employees of the contractor. Union has not asked for abolition of contract labour. Union wants abolition, in case Contract labour is not abolished by appropriate government, the claim deserves to be rejected. It is submitted that this Tribunal is constrained under Section 7A of ID act by the Central Government. The appropriate Government in the matter is not Central Government therefore the reference is not tenable. That services of the workers engaged for work of transportation of coal are not regulated by provisions of Mines act rather their services are regulated by Motor Transporters Act. The trucks used for transport owned by contractors are registered as public carriers under Motor vehicles act 1939. It is reiterated that appropriate Government is State Government, reference is not tenable. Motor Transport workers defined under section 2(h) of Motor act 1961 consequently this Tribunal has no jurisdiction. Process of transportation of coal can be termed as part or ancillary to the process of coal mining. That Railway siding is not included in price structure by Central Government. Transportation of coal doesnot come within the ambit of production of coal. That 1940 claimants mentioned in the list were in employment of the contractors is denied. The perusal of list not show Sirname, address of the workers. Details of service period with contractors are not given in the list. List is totally imaginary and it can always be misused. On such ground, 2nd party prays claimants are not entitled for regularization or any relief.

11. Ist party filed rejoinder at Page 63 to 72 reiterating most of its contentions in statement of claim. Union further submits that coal is transported by contractors to Railway siding. Said work should have been done by the regular employees. Management has no other means except truck for its transportation is hard truth. The contractor's workers should have been paid wages under NCWA. Work of transportation of coal, driver conductors, mazdoors engaged by contractor were doing loading, unloading work was job of regular employees. Said work was of perennial nature. The work of transport by tipper, directions were given by Manager to what pnce the coal was to be transported. The claimants were working under the control of the management. The claim of the management that work was not of perennial nature is false. Work is of prohibited category. The employees of contractors be regularized.

12. Considering pleadings on record, my predecessor has framed issues on 11-2-2010 which are as under. Issue No.2 whether contract was sham was challenged by management filing writ petition no. 10792/2010 was dismissed by

Hon'ble High court on 18-11-2010. I adopt above issues and I record my finding against each of them for the reasons given below:-

(1) Whether the reference is maintainable?	In Affirmative
(2) Whether the contract was sham?	In Negative
(3) Whether the action of the management of Pench Area of M/S WCL Ltd in denying to absorb and regularize the service of the 1940 workers (list enclosed) engaged by the contractors on transportation of coal from Shivpuri and other coalmines to B.G.Siding of WCL, Pench Area, is legal and justified?	In Affirmative
(4) Whether the workmen are entitled to get backwages if any from the date of their dis-engagement from employment?	In Negative
(5) To what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

13. Before dealing with findings on issues framed above, certain facts brought to my notice by learned counsel for 2nd party Shri A.K.Shashi needs to be mentioned. That after receiving order of reference, proceeding was registered on 20-3-95. On 13-5-05, Shri P.K.Bannerjee represented Ist party. That in election of Union held, the panel of Shri P.K.Bannerjee was ousted. SKMS Union then stopped representing. That SKMS Union is prosecuting other reference raised by Union. Ist party engaged advocate Shri P.K.Bannerjee. Shri S.K.Bannerjee was representing the management. That list of workers was not received along with order of reference. List of workers was received along with letter dated 23-5-2014. Workers Sl.No.1 to 251 are shown drivers, 252 to 502 shown as cleaners, 503 to 508 shown as clerks, 509 to 1940 shown as labours. On application document No.10 was rejected vide order dated 13-4-05, notice was issued to General secretary. After order dated 24-7-06, list was awaited from Ministry. Document No.11, application for impleading contractor was rejected on 20-8-08. The application was submitted by Dwarika and others for party was disposed off vide order dated 16-12-08. Advocate Rajesh Chand had submitted application for participating on behalf of 27 workers was disposed vide order dated 6-6-09. Application document No. 34,35 for participating in reference. The application dated 12-10-09 which amounted to review was not pressed. The application by interveners was disposed off vide order dated 16-4-09. That identity of the claimants is not possible. The application for framing additional issue is disposed off as not pressed. Advocate Vijay Tripathi represents 870 workers, Shri R.C.Shrivastava represents some of the workers on whose behalf he has filed vakeel patra. As list of workers is received along with letter dated 23-5-14, dispute pertaining to those employees needs to be decided.

14. Point No.1- Issue No.1 pertains to tenability of reference. In written Statement, 2nd party has pleaded that term of reference pertains to transportation of coal. Trucks used for transportation are registered under Public Motor Vehicle Act etc. The appropriate Government is the State Government. Central Government has no authority to refer the dispute. In the statement of claim, Ist party Union has pleaded that contract for transport of coal from yard to BG Railway siding is empty formality. Ist party claimants are employees of WCL whether the contract is empty formality, sham and bogus needs to be decided recording evidence as covered in Issue No.3, the order of reference is not challenged by management, in my considered view, the reference appears tenable. On the point learned counsel for management Shri A.K.Shashi relied on ratio held in case between

Steel Authority of India Ltd and another versus State of West Bengal and others reported in 2009-I-LLJ-241-SC. Their Lordship dealing with section 7,8,10 of CL(R&A) Act raising of dispute by contract workers Union- referred by State Government, no pleading by workmen that contract was sham and bogus, reference was quashed. Their Lordship held in absence of plea that contract is sham and bogus, reference of dispute regarding absorption of contract workmen cannot be sustained.

In present case, in statement of claim filed by Ist party Union in para 12, there is clear pleading that contract is only empty formality. The contractors have been employed under contract entered into without justification. In para 13, Ist party has pleaded that workers are essentially used for raising of coal. The middle man has no locus-standi. In Para 15, it is pleaded that workers are employees of management looking from any angle. Therefore ratio held in the above cited case cannot be applied to case at hand. For above reasons, I record my finding in Point No.1 in Affirmative.

15. Point No.2- Issue pertains to whether the contract entered by 2nd party for transportation of work was sham and bogus. As stated above, there is pleading in para 12,13 & 15 of the statement of claim that contract was formality. However the pleading of Ist party are not clear how the contract entered by management for transport of coal was sham or bogus. The term of reference is denial of regularization of 1940 contractor's employees. Though steps are taken by various persons through their Advocate and individual seeking permission to participate in reference proceeding except Shri Rajesh, no other workers have adduced their evidence. In his affidavit of evidence filed by Shri Rajesh Dhurve, affidavit is devoted that 1940 labours connected with the dispute were working as driver, cleaner, doing loading, unloading work. Some of the employees were doing clerical work since 1991. All the workers were denied benefit of regularization of wages and statutory benefits. The claimants were shown as employees of contractor. Their attendance register was maintained by employees of the management. They were not working under any contractor. They were working under Sub area Manager, Mining sirdar, overman, time keeper, clerk. Shri Rajesh Dhurve in his cross examination says dispute pertaining to 1940 labour was raised were members of Union. He has oral information that half of the claimants were members of the Union. He had accepted membership of the Union. Documents were submitted to the Union relating to gate pass, payment slip, Identity card. After disengagement, he had given two gate pass one pay slip including claimants who were not members of the Union. He is resident of Chhindwara, he is unable to tell place of residence of other claimants. In para 45 of his cross-examination, Shri Rajesh Dhurve says he does not know names of contractors told to him. That the claimants were required to work under drivers were required to work under Mining sirdar and sometimes Manager was giving instructions. Pit Munshi was giving instructions, he was unable to tell their names. Other claimants were also given instructions by those persons. The attendance register was maintained by clerk of WCL, he was unable to tell his name. Wages were paid as per attendance register every 15 days or at end of month. Payment was made at window of WCL by the clerk. Thumb marks were obtained by clerk, he was unable to tell his name. Gate pass was issued for carrying truck by colliery office. Name of contractor was not written on it. He does not remember whether the seal of contractor was put on it. Shri Rajesh was unable to tell name of the driver. 251 workers were driving vehicle of WCL. He was unable to tell number of vehicles in one shift. All the trucks were carrying name of WCL, Pench Area. In Para 62 of his cross examination, Shri Dhurve was unable to tell whether Trilok Singh Khanduja, Awtar Singh Transport, Khanduja Coal Transport company, Bhogilal company, Punjab Transport company and coal career were given contract. He denies that 1940 claimants were not engaged by those contractors. When he was working, all those contractors were doing the work of transport of coal. In para 66 of his cross, Shri Rajesh was unable to tell among claimants who were working, their particular contractor. He was unable to tell what period, the work of contractor was continued.

16. Evidence of management's witness Shri A.Vyasulu shows that contractors were engaged for their work of transportation of coal. Names of six contractors are mentioned in para 10 of his affidavit. Management's witness Shri Ramawtar Yadav has also given names of all six contractors and details of tender document, work order agreement. Shri Gulam Hussain has also narrated names of contractors whom the work of transport of coal was given. Shri Tapan Mitra has also given details of contractor and documents of tender and contract. Documents Exhibit M-1 to M-57 are admitted from evidence of Tapan Mitra. Documents 58 to 72 are admitted in evidence from evidence of Shri M.B.Kumbhare. All those witnesses in their cross examination have deposed that contractors were paying wages to labours engaged by them. The suggestions that labours engaged by contractors were paid by the management, they were working under control and supervision of employees of management are denied. Management's witness Shri Vyasulu in his cross examination admitted that claimants connected with the dispute were doing work of loading unloading truck during 1990-95. Witness was declared hostile. In his cross-examination, Shri Vyasulu says he is not acquainted with claimants of Ist party. He has stated that he was acquainted with some of the claimants and not with the others. He had not seen list of employees received with order of reference. He was unable to tell whether he was acquainted with persons whose names are in list or not he was unable to tell who were working as driver, cleaner during the period 1990-95. In view of evidence in cross by management after declaring the witness hostile, his evidence is completely settled that he is not acquainted with claimants whose name are shown in the list of workers.

17. Documents produced by Ist party Exhibit W-6 is copy of plaint suit filed by transporters in civil court before 2nd civil judge Chhindwara has no relevance to the controversy. Exhibit W-7 pertains to tender of transportation of coal 75000 tons to Trilok Singh Khanduja, 75000 tons to carrier Parasia, Exhibit W-8 pertains to awarding work of transportation of coal to 5 contractors, 50,000 tons each on 7-6-91 for amount of Rs.12lakhs each total 60 Lakhs. Exhibit W-9 short tender notice for work of transporting coal 300 tons per day for higher of 50 number of tippers. Exhibit W-10 pertains to submission of wagesheet by transport contractors along with transport bill dated 30-8-89. Exhibit W-11 is letter dated 17-4-91 to coal carriers Parasia failed to complete the work. Consequently substantial loss was suffered by company, panel action was threatened. Detailed documents and agreements of contract with those contractors finds various terms that the contractor would engage his employees. Management could not be responsible for any claim. Similar terms and conditions mentioned in articles of agreement. Contract period will be of 12 months. The period of commencement is shown. Exhibit M-4 provides for if there is increase of more than 10 paise per litre in diesel price, same will be considered for reimbursement. The wages to the labour will be disbursed by contractor on specified date at specified place and company made deputy supervisor for supervision of payment. Company reserve

right upon contractor to produce books of accounts including attendance register, bills. The company at his discretion can terminate the contract for paid security amount. All the articles of agreement shows huge amount was to be deposited towards security by the contractors. The agreements pertains to transport of 20000 tons. Exhibit M-5 3 Lakh tons, security amount Rs. One Lakh the articles of agreement also provides for arbitration in case of dispute. Exhibit M-7 pertains to transportation of 75000 coal, M-8 1 Lakh tons of coal, M-9 2 lakhs tons of coal, M-10 1 Lakh ton of coal, M-13 20000 ton of coal. The labour will be employed directly by contractor who will be responsible for payment of all lawful dues to labour engaged by him. Exhibit M-16 pertains to transport of 75000 tons of coal. M-17 articles of agreement finds similar provisions, M-18 pertains to transport of 3 lakh tons security deposit Rs. 50,000. Exhibit M-20- similar terms and conditions are found, Exhibit M-21 pertains to transport of 60000 tons. M-22 pertains to One Lakh tons of coal. M-25 20,000 tons of coal, M-27- 3,50,000 tons of coal, M-28- 2,05,000 tons of coal, M-30- 3,00,000, Exhibit M-31- 1,25,000 ton, Exhibit M-33- One Lakh, M-36- 2.5 Lakh ton, M-39- One Lakh ton, M-40- 20000 ton, M-45- 15000 ton by trucks, tippers, rates of transport are mentioned in all those documents. Huge amount of deposit is also mentioned. M-47 is for transport of one lakh ton transport of coal, M-50 3 lakh ton of coal, M-51- 50000 ton of coal, M-54- 75000 ton of coal, M-56- 1,20,000 ton of coal. The work assigned to contractor for huge transport of coal, the claimants claimed that they were working with WCL. As per the above documents, work of transport of coal by truck was given to the contractors. The evidence of Shri Rajesh Dhurve is absolutely not devoted about how those contracts were only paper work. When any of the claimants working as driver, cleaner, labour were not having their own trucks, the evidence of shri Rajesh is silent that management was having sufficient number of trucks for transportation of coal shown in all those documents, the contract executed by management in favour of the contractors cannot be said only paper work.

18. Management's witnesses Jagdish Bhasin and Jagjit Mann were examined on commission. Shri Jagdish Bhasin in his evidence says that he was carrying work of transportation of coal in WCL. He engaged one driver, conductor and about 6 labours. The tippers were unloading the coal. He was carrying the work as per the term of contract. In his cross-examination, Jagdish Bhasin was unable to tell name of employees engaged by him as matter was of 25-26 years back. Employees were paid by him, he was unable to tell rate of wages. Record about payment of wages was maintained. The record was not available with him. He denies that management was receiving record every month. He did not remember whether record of payment of wages was written by management every month. Identity card was not issued to his employees by the management. In evidence of management's witness Shri Jagdish Singh, he says he was carrying work of transportation of coal since 1988. He did not recollect names of mine. Coal was transported upto BG Siding by tipper. 2-3 tipper belong to him. He had engaged drivers. Unloading was done from machine filled in tipper. Tenders were issued, work order were issued by him. Work was carried as per terms and conditions. When list of 1940 workers was shown to him, witness was unable to say anything about him. Evidence remained unchallenged.

19. On point whether contract is camouflage, learned counsel for Ist party relied on ratio held in case between

Secretary, HSEB versus Suresh and others reported in 1999-3-SCC-601. Their Lordship dealing with claim for absorption of contract labours engaged under bogus contract observed on facts, the contractor found only to be a name leader and that there was no genuine contract with him. High Court rightly lifted the veil and held that safai karamcharis to be employees of the Board and therefore entitled to reinstatement without resort to Section 10 of Contract Labour Act.

Reliance is placed in case between International Airport Authority of India versus International Air Cargo Workers Union and another reported in 2009(13)SCC-374. Their Lordship dealing with Section 2(b) and 10(1) of CL(R&A) Act 1970 whether the labour contract genuine or sham, direction and control over employees held whether direction and control is with principal employer or with contractor, has to be determined with reference to factors like who pays salary who has power to initiate disciplinary action, to remove/ dismiss employee from service, who can tell employee the way work should be done etc. In such a situation, primary control still vests with contractor and not with principal employer.

In present case, evidence of Shri Rajesh is about payment and control of workers by Principal Employer i.e. WCL is not cogent and reliable. Present reference is of 1940 labours working as driver, conductor, labours connected with dispute. It is difficult to believe that he can recollect payment of wages and control about working of all those labours were of WCL.

20. Learned counsel for 2nd party Shri A.K. Shashi relies on ratio held in case between

General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon and Bharat lal and another reported in 2011-I-LLJ-321(SC). Their Lordship dealing with Section 2(13), 31(3), 63(3) of Industrial Relations Act 1960 that two well recognized tests to find out whether an employee was contract labourer or direct employee were payment of salary and control and supervision of employee. Respondent was held disentitled to any relief also on the ground of suppression of material facts.

Reliance is also placed in case of Steel Authority of India Ltd versus Union of India and others reported in 2006(12)SCC-233. Their Lordship held determination of question as to whether the contract labour should be abolished or not is within the exclusive domain of the appropriate Government under Section 10 of CL(R&A)Act, 1970. Neither Labour Court under ID Act nor writ Court can determine the said question. However where the contention is raised that the contract entered into by and between the management and the contractor is a sham one in view of Steel Authority of India Ltd 2001(7)SCC 1 an industrial adjudicator would be entitled to determine the said issue.

In present case, Ist party claimants claims to be employee of WCL. However the evidence adduced by Ist party about the contract was bogus only paper work is not convincing.

Reliance is also placed in case between Airports Authority of India Ltd versus Indian Airport Kamgar Union and others reported in 2011-I-LLJ-211(Bom). Her Ladyship held that basis of the award proceeded on a fundamentally erroneous premise that brought them within the scope of workmen under ID Act. That basis suffered from a fundamental error and disregarded the ground realities of such work. The award was held not sustainable.

Counsel for Ist party also pointed out my attention to Section 2(h) of Mines Act. Said section provides-

A person is paid to be employed in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager whether for wages or not-

(iii) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;

Section 48 provides- For every mine, there shall be kept in the prescribed form and place a register of all persons employed in the mine showing in respect of each such person-

- (a) The name of the employee with the name of his father or, of her husband as the case may be and such other particulars as may be necessary for purposes of identification;
- (b) The age and sex of the employee;
- (c) The nature of employment whether above ground or below ground and if above ground, whether in open cast workings or otherwise and the date of commencement thereof.

Management has produced annual return Exhibit M-57 to 62. As the evidence of Rajesh Dhurve is not cogent and reliable about engagement of 1940 claimants, above statutory provisions are of no help to support his claim.

Considering the evidenced adduced by both parties, I hold that the evidence adduced by witness of Ist party is not sufficient to establish that the contract was bogus and only paper work. The issue is answered in Negative.

21. Issue No. 3, 4 & 5:- Issue No. 3 to 5 are interconnected with the relief claimed by claimant therefore it is convenient to decide all those issues collectively. In support of their claim, affidavit of evidence of Rajesh is filed. Other claimants have not adduced evidence in support of their claim despite applications were filed by different claimants for participating in reference engaging different counsel. Advocate Vijay Tripathi has been authorized by 827 workers. Some workers have engaged Shri R.C.Shrivastava, P.Yadav. 817 labours engaged Shri Rajesh Chand, Advocate have not adduced any evidence. Witness of Ist party Rajesh in his evidence has claimed that all 1940 workers are acquainted to him, they were working as driver, cleaner, lading, unloading labours since 1991. Claimants were not paid wages as per the settlements with management. The contractor was engaged by management to deny benefits to them. That they were doing work of loading coal in truck, transporting to Railway BG siding., they were working under control and supervision of officers of WCL. Their attendance register was maintained. They were not working under contractor, gate pass was issued for entry in the premises, work carried by them is of permanent nature. They completed more than 240 days continuous working during each of the year. When less wages were paid, discussion has taken place between Union and management in February & September 1990. The dispute w.r.t. 300 workers in case of Ramjanam was adjudicated. The workers were reinstated. That they were working under Sub-Area Manager, Mining Sirdar, overman, clerk of WCL. In his cross-examination, Shri Rajesh Dhurve claims ignorance whether the original documents given to Shri P.K.Bannerjee by the claimants are produced in the case. He is resident of Chhindwara. He was unable to tell place of residence of other claimants. Around 817 workers have requested permission to participate in reference. That 1940 persons orally authorized him to prosecute the claim. He had not received contribution from them towards expenses, some claimants were paying him. After death of Shri P.K.Bannerjee, other Union labours not shown interest in prosecuting the claim. He has no dispute with Union General Secretary Bharat Sakrawar. Bharat Sakrawar told that he will not prosecute the reference. That the 1940 claimants used to talk with him are not residing at Parasia. He was unable to tell how many claimants were residing at Parasia. That some claimants reside in UP, Bihar. He used to talk with them on telephone. They used to meet him personally, he was unable to tell particulars of any of the claimants.

22. Rajesh in his further cross says Personal Manager appointed him. He was unable to tell name of mine in which he was appointed. He is giving evidence on behalf of all the claimants. All the claimants were appointed through Personal

Manager. There was no public notice for recruitment. Interview was conducted by Personal Manager, Agent, Colliery Manager but he was unable to tell their names. Appointment letter in writing was not received by them. 251 claimants were working as Driver, 251 as cleaner, 8 as clerk. Rest were working as labours. He was unable to tell who were working as Driver and other jobs. When demand was submitted for regularization by Union, what were the discussions he was unable to tell. Shri P.K.Bannerjee told him that they were shown as contractor slips. Names of contractor were not told to him. All the claimants were working under management. Pit Munshi, Mining Sirdar, overman and sometimes Manager were giving instructions to them. He was unable to tell their names as long time has passed. The instructions for work were also given to the claimants doing other job. All the claimants were working on the ground. They never worked underground. All the claimants were doing work of transporting coal from pit mouth to Railway siding. The clerks of WCL were maintaining attendance, he was unable to tell their names, gate pass was given for entry of truck from colliery, number of truck, name of driver, weight of coal, name of contractor was not mentioned. Driver was given different vehicle in each shifts. Witness shown inability to tell how many driver were working in shift, how many vehicles were operated in shift. All the vehicles were of WCL, Pench Area. He was unable to tell who were working under contractor. As per his knowledge, any of the office bearer donot go to labour department. Evidence given by Rajesh after more than 15 years on behalf of all claimants for human mind, it is difficult to recollect about working of 1940 claimants working on different posts.

23. Management has adduced evidence of Shri A.Vyasulu, Ghulam Hussain, Tapan Kumar Mitra, Abhijit Dutta, M.B.Kumhare and Shri R.N.Singh w.r.t. working of claimants as contract labours, witness A.Vyasulu was declared hostile and he has been cross-examined. His cross-examination is clear that he had not seen list of employees received as per order of reference. He had not maintained any document about loading, unloading of coal in trucks. He was unable to tell who were working as Driver, cleaner during 1990 to 1995. Ramavtar in his cross-examination says BG Siding is located in Pench Area of WCL. The track by side of Railway is called Railway siding. Coal is supplied to BG siding from Shivpuri, Vishnupuri, Sethia opencast mine transported by tipper/ dumper. There was no specific period for contract. Transportation was lasting till coal stock has exhausted. He claimed ignorance whether contract was for one year. He claims ignorance whether I Card and Gate pass were issued to the drivers. He not seen account of WCL, Pench Area. He has no information whether 1940 employees in the case were members of SKMS Union. He was unable to tell salary of Driver engaged by contractor. He was not maintaining attendance of contractor's labours.

24. Ramavwar in his cross-examination claims ignorance who was maintaining attendance of contractor's employee. He claims ignorance whether Central Government prohibited contract workers. He admits only dumper is available for transport of coal from Shivpuri to BG Siding. During 1980 to 1985, manual labour were not appointed. He explained that work was mechanized. In 1985, about 100 employees were working in BG Siding in Category I to IX. Shri Ghulam Hussain also supported management's contention about engagement of contractors. Work was not of prohibited category. Management never engaged claimants for loading unloading work. In his cross, he says in 1995, 100-125 drivers were working for transport of coal. Their work was supervised by contractor. Weighment was done at weighbride by clerk of WCL. The distance between yard and BG Siding was different. Weighment was made by the clerk at the way bridge. The entry of truck used to be taken in the register but he had not seen the register. That stock yard where entry of truck was taken, clerk was not remaining present. He had seen employees of contractor working as driver, conductor. In cross-examination of management's witnesses nothing is asked how the contracts were sham and bogus. From evidence of Shri Tapan Kumar Mitra, documents Exhibit M-1 to M-57 are proved. In his cross, he says the officers nominated by Manager were supervising payment of contract labours. Management was getting information about labours engaged by contractor. Presently he was not getting information. The information was received to the colliery authorities. He admits that colliery yard is under control of colliery management. Permission of management is required for entry in yard. He was unable to tell how driver, conductors and truck entry in stock yard were identified/ verified. The coal production carried on daily basis in Form B register, names of colliery employee were recorded. Evidence of management's witness Abhijit is about appointment in WC made as per recruitment rules and 6 contractors were engaged for contract basis. Their cross is devoted on the point of loading trucks from stock yard. The drivers and cleaners were employees of the contractors. Cross-examination of both witnesses is absolutely silent how contract was bogus.

25. Management's witness Kumbhare proved Form B and other documents Register Exhibit 58 to 70. His cross-examination is devoted about the employees engaged by contractors for transport work. He was unable to tell what work was carried by contract labour during 1992 to 1995. The contractors were using dipper/ dumper for transportation of work. He claims ignorance who was issuing the gate pass. Identification mark of driver was not provided in the gate pass.

26. Documents Exhibit M-58 to 62 are copies of annual return with respective contractors engaged for transport work by management corroborates evidence of management's witness that the contractors were allotted work of transportation of coal from stock to BG Siding. Form B register is produced by management at M-63 to 66. W.r.t. employees of the management, there was no dispute that in Form B Register, name of any of the claimant is not

recorded. From evidence of management's witness Shri R.N.Singh, documents Exhibit M-71(1) to 71(21) was proved are the profit and loss report. It has no relevance for deciding controversy between parties. Copy of notification dated 21-6-88 is produced at Exhibit W-5 prohibits employment of contract labours but work of transportation of coal is not included. Proviso (b) in said circular is clear that quarries located in side of river in Pench Valley and similar other patch deposits which can only be worked when level of river has gone down and during rainy season has been excluded from the notification. Thus work of transportation of coal is not prohibited in above said notification.

27. Learned counsel for Ist party Shri Vijay Tripathi relies on ratio held in case between

International Airport Authority of India versus International Air Cargo workers Union and another reported in 2009(13)SCC-374. Their Lordship held whether direction and control over employees held whether direction and control is with principal employer or with contractor has to be determined with reference to factors like who pays salary, who has power to initiate disciplinary action to remove/ dismiss employee from service who can tell employee the way work should be done etc. However where contract is merely to supply labour only, contract labour is bound to work under supervision of principal employer.

I have discussed evidence of Rajesh and evidence of management and documents on record, evidence adduced by workman is not devoted on any of the point considered by their Lordship. Evidence of management's witnesses and documents produced on record shows that contract of transport of coal was given to six contractors time to time cannot be said bogus. Management's witnesses Jagdish Bhasin and Jagjit Mann is clear that workers engaged by them were working under their supervision. Therefore ratio held in case doesnot support the claim of workman.

Shri R.C.Shrivastava learned counsel for workman relies on ratio held in case between Bharat Heavy Electricals Ltd versus State of UP and others reported in 2003(6)SCC-528. Their Lordship dealing with employer employee relationship held that test of control engaging workmen through intermediary but maintaining record of attendance and supervising their work through own employees lifting the veil or looking at the conspectus of factors governing the employment held involvement of the direct contractor was merely figurative and sham.

Evidence in present case of Rajesh Dhurve and management's witnesses discussed above the contract could not be held bogus, sham. Ratio cannot be applied to case at hand.

Steel Authority of India Ltd. and others versus National Union waterfront workers and others reported in 2001(7)SCC-1. My attention is pointed out to Para 68, 101,125, 126. In Para 68 their Lordship extracted Section 10 of CL(R&A)Act which empowers appropriate Government to prohibit contract employment in establishment laid down procedure and specifies the relevant factors. Their Lordship have enumerated the consequences following on issuing notification under Section 10 of Contract Labour Act- (1) contract labour working in the establishment concerned at the time of issue of notification will cease to function; (2) the contract of principal employer with the contractor in regard to the contract labour comes to an end; (3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter; (4) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification doesnot serve the relationship of master and servant between the contractor and the contract labour, (5) the contractor can utilize the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it will be available. (6) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of ID Act.

As the notification issued by the Government doesnot include the transportation of coal therefore Para 68 of the judgment cannot support the claim of Ist party workman. In Para 101, their Lordship held that automatic absorption doesnot follow on prohibition of contract labour but directed the Principal Employer to consider the contract labour by giving them preference in appointment.

In para 102, their Lordship discussed if however so called contractor is not genuine but sham and camouflage to hide the reality. Section 10 would not apply and workman can raise the Industrial dispute for relief that they should be deemed to be employees of principal employer. Industrial Court or industrial adjudicator would have jurisdiction to entertain such a dispute and grant necessary relief.

In para 125(4), their Lordship overrule judgment in this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator. My attention was specifically drawn to Para 125(5) of the judgment. Their Lordship held if contract is found to be not genuine but mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder-

In Para 125(6) their Lordship held if contract is found to be genuine and prohibition, notification under Section 10(1) of CLRA Act in respect of the establishment concerned has been issued by the appropriate Government

prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the conditions as to academic qualifications other than technical qualifications.

In present case, the Ist party has failed to establish that the contract is not genuine or bogus. The notification issued by Government doesnot include work of transportation of coal therefore Para 125(6,7) doesnot advance the claim of Ist party workman.

28. Learned counsel for Ist party Shri Vijay Tripathi relied on ratio held in case between

Secretary HSEB versus Suresh and others reported in 1999(3)SCC 60. Their Lordship dealing with doctrine of lifting of veil. The facts of present case are not comparable as in present case, evidence of Shri Rajesh Dhurve about all the claimants were employeod by the management and contract was mere paper work is not found reliable. Ratio held in the case cannot be applied.

29. Shri Vijay Tripathi and R.C.Shrivastava both relied on ratio held in case between

Ramnath versus Extra Assistant Commissioner reported in AIR-1952-Nagpur 313. Their Lordship dealing with Section 134 of Evidence Act held law doesnot require any number of witnesses to prove a particular fact. Of course it is open to a final court of fact to believe or to disbelieve a statement but simply because the statement is of one witness that cannot by itself be a ground for not acting upon that testimony.

I have discussed evidence of Rajesh in detail. His evidence is absolutely not worth reliance to hold that all the claimants were employees of the WCL and contract was bogus. Ratio held in the case cannot be applied to present case as the facts are not comparable.

30. Shri Vijay Tripathi relies on ratio held in

Chartered Bank, Bombay versus Chartered Bank Employee Union and another reported in 1960(3)SCR-441. The facts of present case are not comparable. In above cited case Assistant cashier had left the Bank without permission of chief cashier and without holding any enquiry but the services of Assistant Cashier were terminated. Their Lordship held that termination was not genuine. As facts of present case are not comparable, the ratio cannot be applied to case at hand.

31. Shri Vijay Tripathi relies on ratio held in case between

Surendra Singh versus Executive Engineer, HPSEB Division, Shimla and another versus 2013(138)FLR-1048. Ratio held in the case pertains to violation of Section 25 H,G of ID Act. Board was directed to reinstate petitioner with continuity and seniority with 25 % backwages.

In present case for the evidence discussed in detail, the claim of Ist party workman cannot be established. Ratio cannot be applied to case at hand.

32. Reliance is also placed on ratio held in case between

R.M.Yellatti versus Assistant Executive Engineer reporte in 2006(1)SCC-106. This case pertains to onus to prove. Held burden of proof about completion of 240 days continuous service lies on workman.

The evidence of Shri Rajesh is not cogent. Even following the judgment, the ratio is not discharged by Ist party.

Reliance is also placed on ratio held in case between General Manager, Oil and Natural Gas Commission, Silchar versus Oil and Natural Gas Commission contractual workers Union reported in n2008(12)SCC-275. The ratio held in the case pertains to judicial review as well lifting of veil. As evidence in present case is not cogent, detailed discussion of the ratio is not required.

33. Ist party has referred to the judgment in R/43/82 as basis for their claim alleging discrimination by the management. Evidence of Ist party discussed by my predecessor while passing the award is not comparable as in present case, Ist party examined only Rajesh in support of claim of 1940 claimants. Said judgment cannot be relied even for pursuing purpose.

34. Shri A.K.Shashi counsel for management relied on ratio held in case between-

Oshiar Prasad versus employees in relation of management reported in 2015-I-LLJ-513(SC). The facts of above case are not comparable. In above cited case, civil suit was filed. Civil suit was filed by 5 workers was allowed for

declaration that they were entitled to continue in their services. 13 unskilled workers were retained to work. Ratio held in the case cannot be beneficially applied to case at hand.

Shri A.K.Shashi relies on ratio held on bunch of cases reported in 2005(8)SCC-750. Ratio pertains to adverse inference and burden of proof etc. 2007(3)-LLJ-163. Ratio pertains to legality of termination of pump driver whose services were extended beyond six months of his initial appointment. 2007-1-SCC-408. The ratio pertains to public employment, creation of post etc are functions of executive. That daily wagger has no right for regularization. Ratio held in case of 1992-SCC-695 pertains to non compliance of Section 7,12 of CL(R&A)Act 1970 leads to penal provisions under Section 23,25 of the Act. In AIR-2006(SC)-1806. Ratio pertains to daily wagger are not entitled to regularization in violation of constitutional scheme. In 1992-SCC-695, AIR-2006-SC-1806, I have discussed evidence in details, the claim of Ist party is not supported by cogent evidence, detailed discussion of ratio held in all those cases is not required.

Shri Praveen Yadav had submitted copy of judgment in Writ Appeal No. 410/12. I have carefully gone through above judgment. In Writ Petition No. 1056/97, direction was issued to Assistant Labour Commissioner to record finding as to whether the appellant has resorted to any unfair labour practice by giving labour contract to Private Contractor for six months. The report was submitted that the management had engaged contractor for prohibited category of work.

The facts of present case are not comparable. Above judgment cannot be applied to case at hand. In view of the reasons discussed above, I record my finding in Point No.3 in Negative.

35. Point No.4- In view of my finding in Point No.3 in Negative, claim of Ist party workers for regularization with backwages is not established. Consequently I record my finding in Point No.4 in Negative and Point No.5 that the workmen are not entitled to any relief.

36. In the result, award is passed as under:-

- (1) The action of the management of Pench Area of M/S WCL Ltd in denying to absorb and regularize the service of the 1940 workers (list enclosed) engaged by the contractors on transportation of coal from Shivpuri and other coalmines to B.G.Siding of WCL, Pench Area, is legal and proper.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 55/14) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/69/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/14) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 19.01.2017.

[No. L-22012/69/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/54/2014

The President,
Koyla Shramik Sangh (CITU),
Bangwar Project, PO Bemhore,
Shahdol

...Workman/Union

Versus

Deputy Regional manager,
Bangwar Sub area of SECL,
Po Bemhouri, Distt. Shahdol (MP)

...Management

AWARD

Passed on this 14th day of December 2016

1. As per letter dated 25-6-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/69/2013-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management in not giving benefit of promotion and SLP together to shri M.K.Ghosh and shri Ramesh panika, workmen is proper and legal? If not, to what relief, the workmen concerned are entitled for?”

2. After receiving reference, notices were issued to the parties. Union President appeared on 12-5-2016 and submitted in writing that the dispute between parties was settled. Application for passing No Dispute Award is jointly submitted by management and President of Union shri B.N.Tiwari. It is submitted that clarification w.r.t. I.I.No. 24 of NCWA-VIII in respect of SLP is received by management that in the light of clarification I.I.No.24 received, the concerned employees have been given SLP benefit / promotion. The grievance of workman is settled. Both parties have given said application. As such the dispute between parties ceased to exist. Consequently No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 38/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-17012/42/2003-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/04) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 19.01.2017.

[No. L-17012/42/2003-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/38/04

Shri Mumtaz Khan,
184, South Miloniganj,
Mansoorabad,
Jabalpur (MP)

...Workman

Versus

Sr. Divisional Manager,
Life Insurance corporation of India,
Divisional Office,
Jivan Prakash,
Madanmahal,
Jabalpur

...Management

AWARD

Passed on this 6th day of September 2016

1. As per letter dated 8-4-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17012/42/2003-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of LIC, Divisional Office, Jabalpur MP in terminating the services of Shri Mumtaz Khan Ex.Chowkidar vide order dated 10-12-02 is legal and proper? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/2 to 2/7. Case of Ist party workman is that he was appointed as watchman on 26-4-93 in LIC Divisional Office, Jabalpur. He worked sincerely. Chargesheet was issued to him on 3-9-01. Charges alleged against him were baseless. He had given reply to the chargesheet denying charges against him. Regular departmental enquiry was initiated against him. On completion of enquiry, showcause notice was issued to him alongwith Enquiry Officer's report. That he submitted detailed representation regarding the report of Enquiry Officer. Enquiry Officer held him guilty on ground that he failed to prove his innocence in the enquiry. Workman submits that burden to prove the charges was on the department. Findings of Enquiry Officer are perverse. Ist party further submits that Enquiry Officer observed in his report. It appears prima facie applicant is guilty. When enquiry is conducted, prima facie view by Enquiry Officer is irrelevant. It is reiterated that charges alleged against him are not proved. Enquiry Officer considering letter dated 26-4-00 on guilty of charges. The findings of Enquiry Officer is illegal. Management did not examine any witnesses including Shri N.K.Ghosh who had submitted FIR. Any witness from the list was not examined by the management. He was not given opportunity for his defence. He was not allowed opportunity to cross examine the management's witnesses. It is reiterated that enquiry was conducted arbitrarily, punishment of dismissal imposed against him is illegal. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/3 to 8/15 of Ist party workman. 2nd party raised preliminary objection contending that it is corporation established under LIC Act 1956. 2nd party carries business of Life Insurance. The corporation of 2nd party has power to appoint employees following the rules. Section 7 provides for transfer and vesting of the assets and liabilities. Section 11 provides for transfer of business. Section 48 of Act empowers issuing notification and making rules. Section 49 of the Act provides for making regulations and rules for statutory effect. The provision of ID Act are not applicable to it. As per Section 8 Sub Section (2), any person appointed on temporary basis is entitled for absorption in service of the corporation. Section 23 of the Act deals with number of persons in accordance with rules pertaining to appointment of staff on regular basis. Modified comprehensive instructions are laid down superseding the recruitment instructions of 1979. It is reiterated that in way of rules and regulations of the corporation, this Tribunal has no jurisdiction to decide their reference. The claim of workman deserves to be dismissed.

4. 2nd party did not dispute that Ist party was working as Chowkidar in Divisional Office, Jabalpur. It is denied that chargesheet is issued to workman. 2nd party denies that charges alleged against workman are false. Ist party workman had submitted reply to the chargesheet denying the charges against him. Shri M.Karketta was appointed as Enquiry Officer. Shri V.K.Dabholkar was appointed as Presenting Officer. Enquiry was conducted during the period 16-11-01 to 11-5-02. Enquiry Officer submitted his report. Copy of Enquiry Report was supplied to workman. After showcause notice dated 18-10-02, punishment of removal from service was imposed against him. Enquiry Officer held workman guilty. The word prima facie used in the report of Enquiry Officer cannot be seen in isolation. It is denied that Enquiry Officer held workman guilty only on the basis of letter dated 26-4-00 by Police Station, Garha. The authenticity of said letter was not doubtful. Ist party never deputed authenticity of letter before Enquiry Officer. Ist party was supplied all documents during Enquiry Proceedings. Principles of natural justice were followed by Enquiry Officer. Ist party was given full opportunity for his defence. Workman had not demanded any documents before Enquiry Officer. 2nd party reiterates that order imposed against workman is legal. There is enough evidence on record. Enquiry Officer concluded that workman was responsible for committing theft of silver coins. It was not necessary to examine Shri N.K.Ghosh as witness. FIR was never disputed by workman. On such ground, 2nd party prays that reference be answered in its favour.

5. Though 2nd party had filed application with regard to jurisdiction of this Tribunal, said application was not pressed.

6. As per order dated 28-1-2015, enquiry conducted against Ist party workman is found illegal. Management was permitted to prove misconduct by adducing evidence.

7. Considering pleadings between parties and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether 2 nd party management proves that Ist party workman in collusion with Prahlad Kori committed theft of 95 silver coins or assisted in committing its theft.	Not proved
(ii) Whether it is proved that workman has committed act of dishonesty violating Rule 21,24,39(1) of LIC?	Not proved
(iii) Whether the action of the management of LIC, Divisional Office, Jabalpur in dismissing Shri Mumtaz Khan Ex.watchman vide order dated 10-12-02 is legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

8. Point No.1,2- As per order dated 28-1-2015, enquiry conducted against workman is held illegal. The substance of charges alleged against Ist party pertains to Ist party workman in conspiracy with Prahlad Kori committed theft or assisted in committing theft of 95 silver coins and committed act of dishonesty. After enquiry conducted is found illegal, management was permitted to prove misconduct by adducing evidence.

9. Management filed affidavit of evidence of Shri Sanjeev Kumar Malvi. His affidavit is devoted that 95 silver coins in Almirah in office of the Union were stolen. Report was submitted by shri N.K.Ghosh. workman during interrogation by police has disclosed that 4 silver coins were given to Shri Ramesh Soni on information disclosed by workman. In his cross-examination, management's witness says during year 2000, he was not posted in Divisional office. He had not conducted enquiry neither he was appointed as Presenting Officer. Chargesheet was not issued by him. The office of Society of employees was in office of 2nd party at Jabalpur in 2000. He was unable to tell at which place office was located. During the year 2000, the articles of society were kept in its office. He claims ignorance of the rules of society, who were its office bearers. The office bearer of society had reported to police. He was unable to tell after how much period, after incident of theft, the report was submitted. He claims ignorance about keeping silver coins in society office. He has no knowledge about the documents in that regard and FIR submitted to police. He claims ignorance whether Shri N.K.Ghosh was President of the Society during year 2000. He claims ignorance whether as to 95 silver coins were kept by Mr. N.K.Ghosh in his custody. In his further cross examination, management's witness says on the basis of FIR submitted to police, he has stated in his affidavit that workman had stolen silver coin. He has no knowledge that FIR about theft of Silver coin was submitted by LIC office. Copy of judgment by Criminal Court is produced at Exhibit M-8. Ist party workman and other accused Prahlad, Ravi Kumar, Manoj are acquitted.

10. Ist party workman filed affidavit of his evidence denying charges against him. Evidence of management's witness doesnot disclosed that he had seen the incident workman committing theft of silver coins or assisting in its theft to other accused. From evidence of management's witness, charge of theft of 95 silver coins cannot be established. Witness Shri N.K.Ghosh or other office bearer of the society are not examined. Even copy of FIR is not proved in the case. On the other hand, Ist party workman and other accused in the criminal case are acquitted. The judgment by Criminal Court deserves to be respected.

11. Learned counsel for Ist party Shri Vijay Tripathi relies on ratio held in

Roop Singh Negi versus Punjab National Bank and dothers reported in 2009(2)SCC-570. Their Lordship held mere production of document is not enough. The contents of documentary evidence has to be proved by examining witness. Further held that FIR in itself has no evidence without actual proof of fact stated therein.

The evidence of management's witness is not pointing out that Ist party workman was involved in theft of 95 silver coins or he had assisted the culprits therefore I record my finding in Point No.1,2 in Negative.

12. Point No.3- In view of my finding in Point No.1,2 charges alleged against workman are not proved, punishment of removal from service imposed against workman cannot be sustained. Workman in his affidavit of evidence has stated that after his dismissal from service vide order dated 10-2-02, he is unemployed. He is not engaged in any business. Management has also not adduced any evidence that workman is engaged in any kind of gainful business. Workman had denied that because of his negligence, incident of theft of silver coins had occurred.

In case between Roop Singh Negi versus Punjab National Bank and dothers reported in 2009(2)SCC-570, their Lordship held that appellant peon in respondent Bank found to have been dismissed from service without proper enquiry, reinstatement ordered with full back wages.

As charges against Ist party are not proved, the Ist party workman deserves to be reinstated with full back wages.

13. Learned counsel for 2nd party management in its written notes of argument submitted that Ist party workman could have availed remedy of review of Regulation 48(2). When order of reference is not challenged by 2nd party, the workman cannot be denied relief only on the ground that he had not availed remedy to review as per rules. Shri Amitabh Bharti relied on ratio held in case of

State of West Bengal and others versus Shri Sankar Ghosh reported in Civil Appeal No. 10729 of 2013. Their Lordship held discharge or acquittal not to be a bar to the award of departmental punishment to that officer in respect of the same cause or matter.

In present case, Departmental Enquiry held against workman is found illegal and management has failed to prove charges by adducing evidence. Therefore ratio held in above case cannot be applied to case at hand. For the reasons discussed above in my considered view, workman is entitled for reinstatement with backwages as charges alleged against him are not proved. Accordingly I record my finding in Point No.3.

14. In the result, award is passed as under:-

- (1) The action of the management in imposing punishment of removal vide order dated 10-12-2002 is illegal. Order of removal of workman is set-aside.
- (2) 2nd party is directed to reinstate workman with continuity of service and full backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, दिल्ली के पंचाट (संदर्भ सं. 79/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.01.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO.33,
BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA,
DELHI 110 032**

Present : Shri Harbansh Kumar Saxena

ID. No. 79/2012

Sh. B.S Walia (Ex-Assistant, SBI, Sultanpuri),
The General Secretary,
All India Bank Staff Association,
33-34, Bank Enclave, Ring Road,
Rajouri Garden, New Delhi-110027

...Workman

Versus

Assistant General Manager (Administration),
State Bank of India, Region –VIII,
Delhi Administrative Office-II,
11 Parliament Street,
New Delhi-110001

...Management

AWARD

Claim statement directly received on 12.03.2012. Through which workman prayed as follows:-

“In the end I humbly pray you Sir, that the action of the management be declared malafide, illegal and victimization. The management be directed to reinstate me with full back wages and continuity of services as the proposed punishment of DISMISSAL IS VERY HARSH< SHOCKING DISCRIMINATORY, DISPROPORTIONATE AND ILLEGAL. The workman be reinstated with continuity of service and back wages. Suitable compensation be awarded to the workman for causing him harassment , torture and victimization.”

Against claim statement management filed written statement on 13.09.2012. Where-in management prayed as follows:-

“It is reverentially prayed that the Hon’ble Tribunal be pleased to decide the reference in favour of the Respondent with compensatory costs.

Workman filed rejoinder on 4.1.2013 . Where-in he re-affirmed the contents of claim statement.

On 3.05.2013 Ld. Predecessor framed following issues:-

1. Whether enquiry conducted by the management is just, fair and proper?
2. Whether claimant is entitled to relief of reinstatement in service?

I have heard the Ld.A/R for the parties for deceased workman and perused the written arguments of deceased workman on the point of disposal of issue No.2.

In the light of contentions I perused the record including pleadings of parties and evidence .

Perusal of which makes it crystal clear that preliminary issue No. 1 Which was relating to enquiry which was conducted by the management. Whether it was just, fair and proper?

It was decided on 30.01.2015 in favour of workman and against management and this Tribunal fixed 4.2.2015 for evidence of management to prove misconduct of workman.

But management inspite of several opportunities could not tender its affidavit of management witness hence this Tribunal close the right of adducting management evidence on 14.07.2016 and fixed 4.08.2016 for arguments.

On 5.09.2016 written arguments on behalf of L.Rs of deceased workman filed. Copy of which supplied to Ld. A/R for the management.

Award was reserved with liberty to Ld. A/R for the management to file written arguments in reply. Which has not been filed by Ld. A/R for the management.

Through written argument it was pointed out that charges against deceased workman are not proved.

It is further prayed that L.R Chandana Wallia, widow of deceased workman be paid terminal dues such as P.F. Gratuity, Leave encashment , Pension commutation including pension terms of rules of the Bank.

It is admitted fact that workman died on 11.01.2015 pending decision of this I.D. case so reinstatement of workman with full back wages is not just and proper in the instant case. But LR. Chandana Wallia widow of deceased workman is entitled for reasonable compensation of Rs. One Lac which will be just and proper compensation in lieu of reinstatement with full back wages :

In addition to aforesaid compensation L.R Chandana Wallia widow of Deceased workman shall be entitled for provident fund of Deceased Workman, Gratuity and leave encashment, pension ,commutation including pensions accordance with rules of the bank.

On the basis of aforesaid discussion I am of considered view that Issue No. 2 is liable to be decided in favour of deceased workman and against management . Which is accordingly decided.

Reference is also liable to be decided in favour of Chandana Wallia widow and L.R of deceased workman and against management. Which is accordingly decided. Claim statement is allowed and management is directed to comply the award within two months after expiry of period of available remedy against this Award.

Award is accordingly.

Dated:-15.11.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम/एस दिल्ली मेट्रो रेल कॉर्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, दिल्ली के पंचाट (संदर्भ सं. 107/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 107/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure in the Industrial Dispute between the management of Delhi Metro Rail Corporation and their workmen, received by the Central Government on 19.01.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO.33, BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI 110 032

Present : Shri Harbansh Kumar Saxena

ID. No. 107/2014

Sh. Gaurav Kumar, S/o Sh. Dharamveer
Through Akil Bhartiya Karamchari Trade Union
E- 169, Indira Kalyan Vihar,
Opp. C-173, Okhla Phase-I, New Delhi- 110020

...Workman

Versus

1. M/s. Delhi Metro Rail Corporation (Principal Employer)
Fire Brigade Lane, Barakhamba Road,
New Delhi-110001.
2. M/s. All Services Global Pvt. Ltd.
AG-3, Camp Industrial Estate,
Village-Pahadi, Near HUB,
Opp. Kusum Masala, Gore Gaon,
East Mumbai – 400063

...Managements

AWARD

Safai Karamchari were outsourced by M/s. Delhi Metro Rail Corporation, the principal employer through M/s. All Services Global Pvt. Ltd., the Contractor. Sh. Gaurav Kumar was engaged as a Safai Karamchari by the contractor on 5.02.2011 and deputed to work at the premises of the principal employer at Govindpuri Metro Station. He served the principal employer till 01.06.2013. He was illegally retrenched on 01.06.2013 by management. He raised a demand for reinstatement of his services, which was not conceded to ultimately, an industrial dispute was raised by him before the conciliation officer. Conciliation proceedings were initiated on 17.11.2014 conciliation officer issued certificate of failure to reconciliation between parties. After expiry of 45 days from the date of making application

before the conciliation officer, the claimant filed a claim before this tribunal U/s 2A (2) of Industrial Dispute Act, 1947. Since his case was not hit by the provisions of Sub. S (3) of S-2A of the Act, it was registered as an Industrial Dispute.

In his claim statement, the claimant pleads that he served continuously with the contractor from 5.02.2011 to 01.06.2013. His last drawn wages were Rs. 5000/- per months legal facilities, such as appointment letter, Employment card, Muster Roll Register, Attendance Card/Register, Payment of wages Register, Payment of Bonus Register, Leave Book/Leave Record, Overtime register, E.S.I, EPF etc. He raised a demand in that regard, which annoyed his employer, the contractor. His services were dispensed with on 01.06.2013 in an illegal manner. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

The principal employer resisted the claim pleading that there existed no relationship of employer and employee between respondent No. 1 and the claimant/workman. Workman in his claim statement admitted that he was engaged by the contractor (respondent No.2). Management No.1 had not exercised any control over him. The claimant can not seek any relief against the management No.1. Hence his claim is liable to be dismissed against management No.1.

The contractor respondent no.2 resists the claim pleading that his services were never terminated on 01.06.2013, as alleged by him. Respondent No.2 denied that legal facilitation such as referred in the claim statement were not made available to him. The claimant absented himself from attending to duties. Letters were sent to claimant calling upon him to join his duties. He had not responded to the communications, so sent. Since the claimant had himself abandoned the job, he is not entitled to relief of reinstatement in service with continuity and full back wages.

On 30.08.2016 workman/claimant and Ld. A/r for contractor respondent No. 2 expressed their desire to file settlement report. For which they sought adjournment which was allowed case was adjourned to 04.10.2016 for filing of settlement report.

On 04.10.2016 after lunch case was taken up then workman through his statement as WW1 stated that settlement has been taken place between him and contractor respondent No.2 outside the court and he has received Rs. 30,000/- and no claim of workman/claimant is left to be decided, photo copy of settlement report has been filed by management.

Thus, it emerged that the contractor respondent No.2 paid a sum of Rs. 30,000/- to the claimant/workman towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits if any.

Claimant and respondent No. 2 settled their dispute through settlement.

Award is accordingly passed.

Dated:-15/11/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, दिल्ली के पंचाट (संदर्भ सं. 79/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/177/2007-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure in the Industrial Dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 19.01.2017.

[No. L-12012/177/2007-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO.33,
BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA,
DELHI 110 032****Present : Shri Harbansh Kumar Saxena****ID. No. 79/2008**

Ravinder Kumar,
19/11, M.C.D , Flat,
Model Town-III(Near Jheel).
Delhi-110009

...Workman

Versus

The Assistant General Manager,
Regional Office-I,
NBCC Place, Pragati Vihar,
Bisham Pitamah Marg,
New Delhi-110003

...Management

AWARD

The Central Government in the Ministry of Labour Vide Letter No. L-12012/177/2007(IR(B-I) dated 04.02.2008 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of State Bank of Patiala in imposing the penalty of terminating the services of Sh. Ravinder Kumar, w.e.f. 22.1.2001 is just, fair and legal? If not to what relief the workman is entitled to and from which date?

On 28.01.2008 reference was received in this Tribunal. Which was register as I.D No.79/2008 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 30.04.2008. Where-in he prayed as follows:-

It is accordingly prayed that the Hon’ble Tribunal may be pleased to decide the order of reference in favour of the workman and to make an award, setting aside the action of the management in removing the workman from service w.e.f. 22.01.2001 and directing his reinstatement in the service of the Bank with full wages, continuity of service and with all other service benefits action of the management. The Hon’ble Tribunal may also be pleased to award suitable and reasonable costs of the case to the workman.

Against claim statement management filed written statement on 21.11.2008.Through which it prayed as follows:-

“It is most respectfully prayed that this Hon’ble Court may be pleased to dismiss /reject the statement of claim filed by the workman with exemplary and outstanding costs.

Any other or such further order(s) as this Hon’ble Court may deem fit and proper, may also be passed.

Against which workman filed rejoinder on 23.01.2009. Where-in he reaffirmed the contents of claim statement.

On 7.5.2013 My Ld. Predecessor on the basis of pleading of parties framed following three issues:-

1. Whether enquiry conducted by the Bank was just, fair and proper?
2. Whether delay of seven years in raising the dispute frustrates the claim of the claimant?
3. Whether punishment of removal from service commensurate to the misconduct of the claimant?
4. As in terms of reference.

To prove his case workman adduced his evidence by way of affidavit in evidence.

He tendered his affidavit on 27.08.2014.

His examination-in-chief is as follows:-

I tender my affidavit in my evidence. Contents mentioned in my affidavit are true and based on my personal knowledge.

Affidavit bears my signature at point A and B. Affidavit is marked Ex. WW1/A.

On 11.11.2014, 12.01.2015, 19.2.2015, 20.04.2015, 15.07.2015 and 10.09.2015 management sought adjournment.

On 10.09.2015 case was adjourned to 5.11.2015 for cross-examination of WW1.

But workman died on 7.10.2015. Whose death certified is on record.

On the basis of which his L.Rs have been substituted in his place by me on 11.08.2016.

So there is unchallenged testimony of workman in want of his cross-examination.

Moreover management has not adduced any evidence in support of its case.

In addition to it oral evidence of workman is admissible and relevant as per provisions of S. 32 of Indian Evidence Act.

It is further relevant to mention here that workman in his documentary evidence filed copy of order dated 22.05.2012 of revision petition No 4327 of 2007 and revision petition No. 792 of 2008 passed by National Consumer Disputes Redressal Commission, New Delhi.

Through which order of State Commission regarding payment of Rs. 62,414/- to the workman petitioner being his contribution to the provident fund has been upheld.

That amount of provident fund has not been paid by management to workman or his L.Rs so far.

Management adduced no evidence in support of its case.

I have heard the arguments and perused the pleadings and evidence on record.

My issue wise finding is as follows:-

FINDING ON ISSUE NO. 1

“Whether enquiry conducted by the Bank was just, fair and proper?”

Workman through his evidence could not prove that departmental enquiry conducted by the Bank was not just, fair and proper. Although in the instant case workman himself admitted his guilt before enquiry.

So issue No. 1 is liable to be decided against workman and in favour of management. Which is accordingly decided.

FINDING ON ISSUE NO. 2

“Whether delay of seven years in raising the dispute frustrates the claim of the claimant?”

Burden to prove Issue No. 2 lies on management. But management has not adduced its evidence to prove issue No. 2.

Moreover reference order dated 28.01.2008 Ministry of Labour, New Delhi, has not been challenged by management by way of writ-petition in Hon’ble High Court of Delhi.

In these circumstances issue No. 2 is liable to be decided in favour of workman and against management. Which is accordingly decided.

FINDING ON ISSUE NO. 3

“Whether punishment of removal from service commensurate to the misconduct of the claimant?”

Burden to prove Issue No. 3 lies on workman.

Workman to prove it examined himself. During his cross-examination-in-chief, he tendered his detailed affidavit in his evidence.

Several opportunities have been afforded to management to cross-examine the WW1 but management could not cross-examine him. Who died on 7.10.2015. So his unrebutted, un-controverted statement is sufficient to prove that punishment of removal of workman from service is not in proportion to misconduct of workman.

Moreover, workman admitted his guilt before enquiry so lenient view on the point of punishment of workman must be taken by Bank authority which has not been taken.

In the circumstances of the present case punishment of compulsory retirement of workman was just and proper punishment.

Moreover workman has died on 7.10.2015. In addition to it management adduced its no evidence.

So I am of considered view that issue No. 3 is liable to be decided in favour of workman and against management. Which is accordingly decided.

FINDING ON ISSUE NO. 4

“As in terms of Reference.”

Which mean to what relief the workman entitled to and from which date?

ISSUE No. 2 and 3 have already been decided by me in favour of workman and against management. So workman must be compulsorily retired from his removal of service since 22.01.2001.

Moreover L.Rs of deceased workman entitled to payment of Rs. 62,414/- towards its contribution to his provident fund as per ordered dated 25.05.2012 passed by National Consumer Dispute Redressal Commission, New Delhi. In addition to it workman is also entitled to those reliefs which are provided in case of compulsory retirement from service .

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided partly in favour of workman and partly in favour management. Claim statement is partly allowed.

Award is accordingly passed.

Dated:-27.09.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 110/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-41012/41/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 110/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 19.01.2017.

[No. L-41012/41/2002-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/110/2002

Smt.Meenabai W/o Madanlal,
Manish S/o Madanlal,
Ku. Monika D/o Madanlal, LRs of
Late Shri Madanlal Gannu,
S/o Gannu,R/o Jabalpur Gate,
Bagalia, Itarsi (MP)

...Workman/LRs

Versus

Divisional Railway Manager(P),
Central Railway, Habibganj,
Bhopal (MP)

...Management

AWARD

Passed on this 2nd day of September 2016

1. As per letter dated 25-7-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/41/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager, Central Railway, Bhopal in dismissing the services of Shri Madanlal Gannu w.e.f. 30-10-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 2/2 to 2/5. Case of Ist party workman is that he was working as Diesel Khalasi, Token No. 1673 at Central Railway, Itarsi. He was removed from service w.e.f. 30-10-98. He challenged order of punishment filing appeal. Ist party workman submits that he was removed from service for the alleged misconduct of absence from duty for 3 months i.e. 16-6-96 to 5-9-96. He was not keeping well during the period 16-6-96 to 5-9-96. Notice in standard Form No.5 was issued to him that he had submitted reply to the chargesheet. He submitted medical certificates of Rashtriya Homeo Medical Dispensary Itarsi issued by Dr. Dixit. Ist party workman further submits that enquiry conducted against him suffers from arbitrariness and capricious and mechanical exercise of power. The reply to the charges was not considered by management. He was not given proper opportunity for his defence. He was deliberately not supplied any documents in Enquiry Proceedings. Enquiry Officer did not allow him opportunity for submitting defence witnesses. The findings of Enquiry Officer are perverse. Enquiry Report was not supplied to him. From report of Enquiry Officer, charges against him are not proved. On such ground, Ist party prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of Ist party workman. 2nd party submits that workman was appointed in 1978 as ladder man. Workman arrived on transfer in Diesel Loco Shed Itarsi as Diesel Khalasi in same grade pay. Ist party workman was unauthorisely absent from duty during the period 16-6-96 to 5-9-96. He was served with chargesheet for major penalty. That in enquiry conducted against workman, charges have been proved. Penalty of removal was imposed against him. The appeal challenging the punishment of removal was rejected. It is reiterated that Ist party workman was unauthorisely absent. Said charge has been proved. Workman have not received any treatment in Railway Hospital. He had not reported to duty during the above said period. As per statement of workman, he received some treatment by black magic which is not acceptable. As per Railway rules, the employees felling sick and Railway Hospital is not available, the employee has to report elsewhere for treatment, its information should be given to the Railway authorities within 48 hours. Workman had not submitted any information regarding his treatment for any kind of illness. That diesel Loco shed is very important shed of West Central Railway. It has to run important Mail/ Express/ Passenger Trains and Goods Trains also as per the scheduled time of the trains. Diesel Loco Shed is required to provide Loco engine for such trains. The function of Diesel Loco Shed Itarsi provides such Loco engines. The staff like workman who is irregular in attendance is not required in Diesel Loco Shed. It is reiterated that workman was unauthorisely absent during the period 16-6-96 to 5-9-96. For his proved misconduct, punishment of removal of service has been imposed. The claim of Ist party workman has no merit. It deserves to be dismissed.

4. As per order dated 16-4-2015, enquiry conducted against workman was found vitiated. Management was permitted to prove misconduct before Court.

5. Considering pleadings between parties and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether management proves that workman was unauthorisely absent from 16-6-96 to 5-9-96?	In Affirmative
(ii) Whether it is proved that Ist party workman violated medical rules and not given intimation about his absence to the Management's office?	In Affirmative
(iii) Whether the action of the management of Divisional Railway Manager, Central Railway, Bhopal in dismissing the services of Shri Madanlal Gannu w.e.f. 30-10-98 is justified?	In Negative
(iv) If not, what relief the workman is entitled to?"	As per order.

REASONS

6. Point No.1&2- Enquiry conducted against workman is found vitiated. Management was granted permission to prove misconduct alleged against workman. The misconduct alleged against Ist party workman in standard Form V is that he was unauthorisely absent during the period 16-6-96 to 5-9-96. He had not given intimation of his absence to the office. That workman had violated rules of Medical Treatment. Management filed affidavit of witness Shri Saini Vargese Chaco and Shri M.P.Singh. Both witnesses has stated in his affidavit that workman was unauthorisely absent during the period 16-6-96 to 5-9-96. Workman had not produced medical certificate for above said period when he had appeared for duty on 17-9-96. As per medical rules, if Railway employee fell sick and facility of Railway Hospital is not available, the employee can get treatment from outside but its information should be given to the authority within 48 hours. Management's witness Shri M.P.Singh has also stated in his affidavit if workman was ill and received treatment outside, he should have given its information to the Railway Authorities.

7. Management's witness No. 1in his cross examination says presently he is working as Loco Pilot Dongargarh. Personally he is not acquainted when Ist party workman was working as diesel Assistant Class IV Post. Copy of Medical Rules is not provided to the employees individually. The information about medical rules is given in the training. He denies that workman had submitted certificate of homeo treatment during enquiry. The attendance register of workman is not produced. However in his cross-examination, it is not challenged that workman remained absent from duty during 16-6-96 to 5-9-96. The evidence of management's witness Shri M.P.Singh on above said point is also not challenged.

8. Workman died during pendency of reference, his widow is brought on record. Her evidence is recorded on the point of preliminary issue. No evidence is adduced by LR's of deceased workman about intimation given by deceased workman about his absence or he had received treatment from Homeo Doctor. The evidence recorded in the Enquiry Proceedings cannot be considered as enquiry is found vitiated. On the point, Shri K.B.Singh relies on ratio held in case of-

Neeta Kaplish versus Presiding Officer, Labour Court and another reported in 1999(1)SCC-517. Their Lordship held domestic enquiry which is declared by labour court/ Tribunal to be vitiated, neither was fresh evidence nor did it constitute material on record and therefore proceedings of such enquiry have to be ignored.

9. The evidence of both management's witnesses about absence of workman is not shattered. Though defence of deceased workman was he was suffering from illness and receiving homeo treatment, Ist party not given its information to the Railway Authorities therefore charge of unauthorized absence against deceased workman is proved. Accordingly I record composite finding in Point No.1 and 2 in Affirmative.

10. Point No.3 & 4- In view of my finding in point No.1,2 charge of unauthorized absence against workman is proved, question remains for consideration whether punishment of dismissal imposed against deceased workman is proper and legal. The charge against deceased workman was of unauthorized absence during the period 16-6-96 to 5-9-96 i.e. for 2 months 21 days. The charge alleged against workman was not of habitual absence. Before issuing punishment of dismissal, documents about adverse service record of deceased workman were not served on him therefore the punishment of dismissal imposed by the Disciplinary Authority considering the adverse past record would not be justified. If proved charge of unauthorized absence from 16-6-96 to 5-9-96 is taken into consideration, while imposing the punishment of dismissal, the length of service was not taken into consideration. As per Written Statement filed by the management, Ist party workman was in employment of 2nd party from 9-4-98. Deceased workman was removed from service on 30-10-98. Deceased workman had completed about 20 years service before punishment of removal was imposed against him. For unauthorised absence of 2 months and 21 days, punishment of removal from service is shockingly disproportionate and deserves to be modified. Considering proved charges and nature of work that workman was working in Loco shed, punishment of removal/ dismissal deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No.3 &4.

11. In the result, award is passed as under:-

- (1) The action of the management of Divisional Railway Manager, Central Railway, Bhopal in dismissing the services of Shri Madanlal Gannu w.e.f. 30-10-98 is illegal.
- (2) Punishment of dismissal of deceased workman is modified to compulsory retirement.
- (3) 2nd party management is directed to allow retiral benefits to deceased workman till his death and his LR's after death of deceased workman as per rules.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 229.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 151/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/180/1997-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 151/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.01.2017.

[No. L-12012/180/1997-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/151/2002**

The Dy.General Manager,
State Bank of India Staff Congress (INTUC),
5/235, Pragati State Bank Colony,
Vikas Nagar, Jabalpur.

Workman/Union

Versus

Assistant/ Dy.General Manager,
State Bank of India,
Region-3, Zonal Office,
Civic Centre, Marhatal,
Jabalpur.

Management

A W A R DPassed on this 7th day of September 2016

1. As per letter dated 31-10-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/180/1997-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Jabalpur in not providing the compassionate appointment to the dependent of Late Shri Vijay Mundge is justified? If not, to what relief the applicant concerned is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party claimant submitted statement of claim at Page 9/1 to 9/3. Case of Ist party claimant is his father Late Vijay Kumar Mandge was Ex-Serviceman. He has served

3 years 3 months in military service. his late father joined service of 2nd party as watchman on 16-8-72. He was in service of the Bank in 21-0-92. That his father suffered from disease of his legs. He rendered more than 20 years service with the Bank. That dispute pertaining to his father Vijay Kumar Mandge appointed as watchman died in harness on 21-10-92.

3. Ist party further submits that Departmental Enquiry was not initiated against his father, retrenchment compensation was not paid. His father has not abandoned service. That his father died, he was on roll of the Bank. That 2nd party Bank is industry covered under ID Act. That due to illness of his father, he had submitted applications dated 3-8-89, 27-6-89 for his transfer. On 12-1-91, his father submitted joining report at Baratia branch of State Bank. On 11-2-91, his father was voluntarily retired from service. the rules of voluntary cessation requires person has no intention of joining duties are deemed to have voluntarily retired. In case of his father, he submitted joining at Baratia branch. The notice of voluntary retiring him from service is illegal and the order passed in the colourable exercise of powers. Ist party further submits that his father many times tried to contact the branch but the authorities showed blue eyed treatment towards him during illness. His father was unable to walk, he applied for transfer. His father was shocked from his voluntary retirement. His father died on 21-10-92 leaving widow and children. They have no source of livelihood. On such ground, Ist party claimants claims compassionate employment.

4. 2nd party filed Written Statement opposing claim of Ist party claimant. 2nd party submits that father of claimant was working as guard in the Bank claimant has raised dispute under Section 12 claiming compassionate appointment. The dispute has been referred after directions issued by Honble High Court in Writ Petition No.524/99. That claimant's father was appointed on post of guard. He was posted at Barethia branch. He remained absent from duty for 1116 days during the period 1983 to 1988. In January 89, he resumed duty and again absented from duty from April 89 to February 1991 without submitting application for leave or giving any kind of intimation to the management. That father of claimant was meanwhile transferred to Rewa Main branch on 7-9-90. He was asked to report for duty as per provisions of Bipartite Settlement. On his failure to report duty, he was voluntarily retired from service w.e.f. 11-2-91. Clause 17 of Bipartite Settlement provides for deemed voluntary retirement from service. That amount of gratuity and PF was paid to the LR's as per law. The family of deceased had accepted amount. It is further submitted that sShri Vijay Kumar died on 21-0-92, his widow submitted application raising dispute through State Bank of India Staff Congress claiming compassionate appointment for herself, her son i.e. Ist party complainant. It is reiterated that Shri Vijay father of claimant was deemed voluntary retired on 11-2-91 as per 5th Bipartite settlement. He had abandoned the service. the scheme for compassionate appointment is available only for dependents of the employees who expire while in employment or unable to survive financially. At the time of his death, father of claimant was not in Bank service. Therefore claim for compassionate appointment cannot be allowed to his dependents. The application was not submitted within one year of the death of the deceased. The object of the scheme for compassionate ground is to enable the family to tide over sudden crisis due to the death of the bread winner and such appointment could only be given when the Bank is satisfied that the financial condition of the family is such that but for the provision of employment the family will not be able to meet the crisis.

5. 2nd party submits that application was not submitted even after 5 years of the death. Father of claimant was treated to have voluntarily retired from Bank service under the terms of settlement on account of his long unauthorized absence and was not in employment till 21-10-92. The father of claimant was not in service for 20 years. He rendered service for 18 years 4 months only. It is reiterated that the father of claimant was absent from duty for 1116 days. He was deemed voluntary retired. Claimant is not entitled for appointment.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Jabalpur in not providing the compassionate appointment to the dependent of Late Shri Vijay Mundge is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Claimant is not entitled to any relief.

REASONS

7. The term of reference pertains to denial of compassionate appointment to the claimant dependent of Shri Vijay Kumar Mandge. Management has opposed claim of Ist party on the ground that his deceased father was deemed retired before his death. Claimant filed affidavit of his evidence supporting his claim. That his father was in Bank service from 16-8-72 till 21-10-92. That his father had submitted joining on 12-1-91 at Barthia branch. Without knowledge of his family, his father was voluntarily retired from 11-2-91. His father died on 21-10-92. In his cross-examination, claimant

says he had submitted application for compassionate appointment. He added that his uncle has submitted application for compassionate appointment for him. He claims ignorance in which office said application was submitted. He had not personally seen said application. He passed B.Com. He claims ignorance for how many days his father was on leave. In affidavit of claimant himself, he stated that his father was voluntarily retired on 11-2-91 and his father died on 21-10-92. As such at the time of his death, father of claimant was not in employment of the Bank.

8. Though management of 2nd party filed affidavit of evidence of witness Shri Gautam Basu supporting contentions in Written Statement, he has failed to appear for his cross-examination. His evidence cannot be considered. The documents produced Exhibit M-1 is copy of scheme for appointment on compassionate ground. The object of the scheme is to offer compassionate appointment only when Bank is satisfied that the financial condition of the family is such that but for the provision of employment the family will not be able to meet the crisis. Clause 3 of the scheme provides that application for appointment under the scheme including application for keeping the offer open should be received by the Bank at the earliest and in any case not later than one year from the date of death of the employee. In present case, claimant has not submitted application for employment, documents in that regard are not produced. During course of argument, learned counsel for applicant Shri Ashok Pal emphasized that claimant was minor and as per Clause 4 of the scheme, time limit of 6 years is provided. Present case without submitting application for compassionate appointment, the dispute is directly raised. The order of deemed voluntary retirement of father of claimant is sought to be challenged from pleadings in statement of claim. The term of reference not include legality of the deemed voluntary retirement of father of the claimant. Said contentions of claimant in that regard are beyond the terms of reference. In Exhibit W-1 produced by claimant is application submitted by father of claimant for his transfer on the ground of his illness in the year 1989. Management's witness Shri Sushil Kumar in his affidavit of evidence has stated that father of claimant was deemed retired w.e.f. 11-2-91. As per Clause 17 of the Bipartite Settlement. In his cross-examination, evidence on above point is not challenged. Rather the affidavit of claimant also corroborates the evidence of management's witness on above point. The claimant is not fulfilling the eligibility conditions for claiming compassionate appointment as per the scheme Exhibit M-1.

9. Shri Ashish Shrotri relies on ratio held in case between

Umesh Kumar Nagpal versus State of Haryana and others reported in 1994(4)SCC-138. Their Lordship dealing with compassionate appointment held mere death of an employee does not entitle his family to compassionate appointment. The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death.

Clause 10 of the scheme provides factors to be considered by the authority for determining financial condition of the family is family pension, gratuity amount received, employee's contribution to PF, compensation paid by the Bank etc.

In absence of such information by the management, claim for compassionate appointment by the claimant cannot be said legal. For above reasons, I record my finding in Point No. 1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management in not providing the compassionate appointment to the dependent of Late Shri Vijay Mundge is legal.
- (2) Claimant is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 230.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली मेट्रो रेल कॉर्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ सं. 78/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2013) of the Central Government Industrial Tribunal-cum-

Labour Court No. 1, Delhi as shown in the Annexure in the Industrial Dispute between the management of Delhi Metro Rail Corporation and their workmen, received by the Central Government on 19.01.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX,
DELHI -110032**

ID No. 78/2013

Digvijay Narayan Singh
S/o Sh Ramadhar Singh
(Employee No. 10624)
R/o E-562, Gali No. 9
West Vinod Nagar,
Delhi 110092

...Workman

Versus

The General Manager
DMRC Limited Metro Bhawan 13,
Fire Brigade Lane,
Barakhamba Road, Delhi- 110001

...Management

CLAIM UNDER SECTION 33(A) OF INDUSTRIAL DISPUTE ACT, 1947 ON BEHALF OF WORKMAN.

AWARD

Claimant Digvijay Narayan Singh has filed application Under Section 33(A) of the industrial dispute Act, with the averments that he was appointed as station controller in the pay scale of 6200-225-9575 temporarily. He was performing his duty honestly and sincerely and was confirmed later on from the date of his appointment. The workman was being harassed by the management and was put under suspension 26.10.2012 and later on reinstated on 30.10.2012. Again workman was suspended on 03.11.2012 and management did not release the past salary of the workman for the period of suspension approximately amounting the Rs. 1.5 lakh. The action of the management has been alleged to be mala-fide and illegal. Later on the service of the workman was illegally terminated and now workman is out of job. Legal notice was also served upon 02.11.2012 and 7.11.2012 claiming reinstatement on full back wages.

2. The management filed reply to the statement of claim and alleged that workman was charge sheeted on 31.10.2012 under the conduct rule for gross misconduct. A domestic enquiry was held and enquiry officer vide his report dated 31.01.2013 adjudged the workman to be guilty. Accordingly management dismissed him from service w.e.f. 28.02.2013. The management had admitted the appointment of workman on temporary and denied other material averments. There is also specific reference to the minor and measure penalties initiated against the workman.

This tribunal vide order dt 06.03.2014 framed the following issues:-

- (i) Whether conciliation proceedings were pending before the Conciliation on 28.02.2013 ? If yes, its effects.
- (ii) Whether management has violated provisions of section 33A of the Industrial disputes Act, 1947 ?
- (iii) Relief.

3. During the course of evidence of the Claimant, conciliation between the parties was tried and due to conciliatory attitude of the workman as well as the management, settlement between the parties was reached vide settlement Ex. C-1. The said settlement is duly signed by the workman as well as the management.

4. As per the terms and conditions settlement/ agreement Ex.C-1, workman has agreed to work on the post of Station controller / train operator w.e.f 31.08.2016 the workman has also agreed not to claim any back wages and the period from 28.02.2013 till 30.08.2016 is to be treated as period of absence. He further agreed that he shall not claim any benefit for this period.

5. In view of the final settlement between the parties vide Ex. C-1, it is held that workman Digvijay Narayan Singh as per settlement Ex C-1 shall join duty 31.08.2016 as station controller/ train operator. He shall not be entitled for any

back wages or seniority. Thus, in view of settlement Ex. C-1, no other dispute survives for consideration or adjudication between the parties. Settlement agreement Ex. C-1 shall form in integral part of the award. Let the copy of award be sent to the appropriate Government for publication, as required Under Section 17 of the industrial dispute Act.

Dated : Aug. 30, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली मेट्रो रेल कॉर्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ सं. 180/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 180/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure in the Industrial Dispute between the management of Delhi Metro Rail Corporation and their workmen, received by the Central Government on 19.01.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI -110032

ID No. 180/2015

Shri Satish S/o Shri Sukhram
R/o JJ colony, Gautampuri, Badarpur,
New Delhi 110 044 through
Akhil Bhartiya Karamchari Trade Union (Regd. – 4366)
E-169, Indira Kalyan Vihar,
Opposite C-173, Okhla Phase I,
New Delhi 110 020

...Workman

Versus

1. Delhi Metro Rail Corporation
Fire Brigade Lane, Barakhamba Road,
New Delhi 110 001
2. M/s B.V.G. India,
106, Mercantile House,
First Floor, 16, Kasturba Gandhi Marg,
New Delhi – 110 001

...Management

AWARD

An application was filed before CGIT-cum-Labour Court No.2, New Delhi. Brief facts giving rise to the present controversy are that Shri Satish, the claimant herein was engaged as safai Karamchari with Okhla Metro Station by M/s. BVG India Ltd. (hereinafter referred to as the contractor) at a monthly salary of Rs.4700.00. He worked sincerely and honestly with the contractor. The claimant here never gave a chance of complaint to the management nor was there any charge against him. The claimant was neither paid minimum wages nor was given the benefits under the

laws/CLRA Act, as no he was never paid bonus and appointment letter, employment card, wage slip, attendance card, ESI, EPF etc. was ever given to him. Various requests were made to the contractors, but to no avail. When the claimant resisted the exploitation made against him, it angered the contractor resulting in his termination on 09.08.2012 without serving any show-cause notice, charge sheet and conducting of domestic enquiry. The claimant was also not paid wages for the period 26.07.2012 to 09.08.2012.

2. Later on the workman sent demand notice on 10.08.2012 which was never replied by the management. Later on matter was taken through the union to the Conciliation Officer. However, no action was taken against within 45 days by the Assistant Labour Commissioner also, as such, the workman herein filed his claim directly under sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 (in short the Act). Prayer has been made by the workman for declaring order of termination to be illegal, null and void and to direct reinstatement of the workman alongwith all consequential benefits.

3. Managements were put to notice and both the managements filed separate reply to the statement of claim. Management No.1 in its reply took preliminary objection that the workman herein was never employed by them and there was no relationship of employee and employer between him and the management. Moreover, workman does not fall within the definition of 'workman' as defined under section 2(s) of the Act and there exists no dispute nor this Tribunal has jurisdiction to try the present matter. On merits, Management No.1 has denied most of the averments contained in the statement of claim. Stand of Management No.1 is very specific that the workman was never in the employment of Management No.1 and his services were in fact were terminated by Management No.2.

4. Management No.2, in its reply also took preliminary objections of frivolous, baseless, without any merits, not approaching the Tribunal with clean hands and concealing material facts. It is also averred that the claim is not maintainable as the claimant does not come under the term 'employee' and also does not come under the scope and ambit of section 2(s) of the Act. The claimant was assigned to work at DMRC premises from time to time on ad hoc basis or stop gap arrangement on daily basis. The applicant stopped reporting for duty from 30.05.2013 without assigning any reason and without seeking any leave. On merits, management No.2 also denied that services of the workman were terminated illegally or without any reason etc. and in violation of Section 25F of the Act. The management has denied the other material averments made in the statement of claim. Finally, prayer has been made for dismissing the claim petition with cost.

5. Rejoinder was filed on behalf of the workman to the reply filed by the management, who reasserted the stand taken in his statement of claim and denied the material averments contained in the written statement. However, no specific issues were framed by CGIT-cum-Labour Court No.2.

6. Vide Ministry of Labour and Employment letter No.L-12025/03/2014-IR(B-1) dated 23.01.2015, the case was transferred to this Tribunal and it was registered afresh as an LCA. However, on 20.08.2015, it was noticed that the instant case has been registered as an LCA, whereas dispute has been raised under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947. In view of this, the dispute was registered as an ID case and matter was listed for evidence of the claimant. However, despite grant of several opportunities, neither the claimant nor any authorized representative on his behalf appeared before this Tribunal to prosecute his case. Thus, it is clear that the workman is not interested in adjudication of the case on merits.

7. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

September 30, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 232.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 58/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-41012/25/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Northern Railway and their workmen, received by the Central Government on 19.01.2017.

[No. L-41012/25/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT :** RAKESH KUMAR, Presiding Officer**I.D. No. 58/2014**

Ref.No. L-41012/25/2014-IR(B-I) dated 16.09.2014

BETWEEN :

Sri Uttam Chandra S/o Sri Thakur Prasad
Village & Post Masoli, Mohalla Karoyatar
District Barabanki
Barabanki

AND

1. The Divisional Railway Manager,
Northern Railway
DRM, Hazratganj
Lucknow
2. M/s Shahid Faizan Ahmed & Brothers
654 Begum Ka Makbara
Janpad, Faizabad

AWARD

By order No. L-41012/25/2014-IR(B-I) dated 16.09.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Utam Chander, Barabanki and the DRM (NR) Lucknow/Shahid Faizan Ahmed & Brothers, Faizabad for adjudication.

2. The reference under adjudication is:

“KYA M/S. SHAHID FAIZAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SRI UTTAM CHANDRA S/O SRI THAKUR PRASAD KO DINANK 25.04.2009 KO NAUKARI SE NIKALA JAANA NYOCHIT EV VAIDH HAI? YADI NAHIN TO VADI KIS RAHAT KO PANE KA HAQDAR HAI?”

3. After receiving the schedule, referred by the Govt. of India vide its letter dated 16.09.2014, the case was registered in the court on 30.09.2014. Notice through registered post was issued to the workman for filing claim statement with list of reliance and witnesses, with an advance copy to the management.

4. On 24.04.2015, an authority was filed on behalf of Opposite party No.1 viz. DRM, Northern Railway, Lucknow. Although 13 dates have been given in this case, neither the workman nor his representative, appeared before the Tribunal. No claim statement has been filed till date. Learned AR for the opposite party submitted that perhaps the grievances of the workman might have been redressed.

5. Heard learned AR of the opposite party. Perused the record. Since neither any claim statement has been filed nor any AR/workman appeared before this Tribunal, it seems that the workman does not intend to further proceed with the case. His grievances might have been redressed. In such circumstances it can not be inferred that the impugned order dated 25.04.2009 passed by the opposite party, is illegal or improper. The workman is not entitled to any relief.

6. Award accordingly.

29.07.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 233.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरिएंटल इश्योरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 33/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-17012/31/2004-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of The Oriental Insurance Co. Ltd. and their workmen, received by the Central Government on 19.01.2017.

[No. L-17012/31/2004-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 33/2005

Ref.No. L-17012/31/2004-IR(B-I) dated 08.08.2005

BETWEEN :

Sri Dharmendra Kumar S/o Sri Ram Kumar Balmiki
Bhitri Peerbatawan
Near Santoshi Mata Mandir
District Barabanki

AND

1. The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Vikasdeep, 9th Floor, Station Road
Lucknow
2. The Branch Manager,
The Oriental Insurance Co. Ltd.
Chhaya Chauraha, Indra Market
Barabanki

AWARD

1 By order No. L-17012/31/2004-IR(B-I) dated 8.8.2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Dharmendra Kumar S/o Sri Ram Kumar Balmiki, Barabanki, and the Divisional Manager/Branch Manager, Oriental Insurance Co Ltd. Barabanki/Lucknow for adjudication.

2. The reference under adjudication is:

“KYA PRABANDHAK, “THE ORIENTAL INSURANCE COMPANY LIMITED, SHAKHA BARABANKI TATHA MANDALIYA PRABANDHAK, LUCKNOW DWARA SHRI DHARMENDERA KUMAR PUTRA SHRI RAM KUMAR, BALMIKI KO “SAFAI KARMKAAR” KE ROOP MEIN JULY 1998 SE 25-3-2003 KE MADHYA 240 DIN SE ADHIK ANWARAT (CONTINUOUS) KARYA KE UPRANT EVAM SHAKHA PRABANDHAK, BARABANKI DWARA BAR-BAR MANDLIYA PRABANDHAK KO SHRI

DHARMENDERA KO NIYAMITKARAN (REGULARIZATION) KE LIYE LIKHE JANE KE PASHCHAT BHI NA KIYA JANA EVAM MAAH DECEMBER 2002 SE MARCH 2003 TAK KE MADHYA KA BHUGTAAN NA KIYA JANA NAYAYASANGAT HAI? YADI NAHI TO KARMKAAR SHRI DHARMENDERA KUMAR KIS PARITOSHIK KO PANE KA ADHIKARI HAI?"

3. As per the claim statement A-7 the workman has stated in brief that he was appointed as Safaikarmkar in July 1998 under administrative control of Branch Manager, Oriental Insurance Col., Indra Market, Barabanki, no written appointment letter was issued, neither any such letter was given to him which may reveal whether the workman was appointed on contractual basis or under some project for a certain period. The petitioner has further stated that he had worked with sincerity, dedication and honesty and he was directed orally by Branch Manager in April, 1999 to put up documents for his regularization, subsequently he moved an application accordingly.

4. The petitioner has stressed that on 27.3.2000 he moved an application requesting therein that he had been working for 2 years on a meagre salary of Rs.110/- per month, consequently competent authority enhanced his salary to Rs.310/- per month from Rs.110/- per month, his application for regularization alongwith his academic documents and caste certificate etc. was sent from Branch Office to the Divisional Office, he was performing other assigned work viz despatch of documents, and other office work etc., he was being regularly paid through vouchers for work of Safaikarmkar, regular attendance was being taken. He again moved an application for his regularization on 17.9.2001 which was forwarded by the branch office to the Divisional Office, correspondence was made by the branch office on 20.8.2002 and 11.12.2002 confirming thereby that the petitioner had worked continuously for 5 years; even then his services were not regularized. Moreover, his salary w.e.f. Dec. 2002 to Feb.2003 was held up, for which he moved an application on 4.3.2003, false assurance was given to him but his genuine demand was not accepted neither he was regularized, although he had been working daily since 9.30 AM till late evening. He has further stated that since July 1998 till March 2003 he had worked continuously for about 5 years in several years and he had worked for 240 days in each year.

5. The petitioner asserted that he was orally advised by the Branch Manager that salary would be paid to him through voucher in the name of some other person, when the workman refused for this arrangement, he was asked on 24.3.2003 not to come to office thereafter. The petitioner has alleged that the opposite party with malafide intention adopted illegal and irregular procedure, his services were terminated without any sufficient reason, he was not given any prior notice, unfair labour practice was adopted by the management. With the aforesaid pleadings the petitioner has requested to declare the so called termination order dated 25.3.2003 as illegal. He has prayed for his reinstatement along with back wages and consequential benefits etc. Several annexures have been filed alongwith the claim statement.

6. Thereafter application C-8 dated 20.1.2006 was moved seeking amendment in the reference letter. Time was sought again and again by the petitioner.

7. Corrigendum letter dated 8.10.2010 was received and the workman sought time to file amended claim statement in the light thereof. However, amended claim statement was not filed till this date.

8. Learned AR Sri Prakash Chandra, for the management appeared before this Tribunal on 22.12.2014. Learned AR for the management has submitted that the claim statement lacks merit and deserves to be dismissed.

9. This case has been pending in the court for the last 11 years. The grievance of the petitioner might have been redressed. On 29.8.2016, the workman moved an application submitting thereby that he does not intend to press upon his petition.

10. Arguments of both the Learned ARs have been heard and record has been scanned thoroughly. In support of the claim statement A-7 no evidence was adduced, neither any amended claim statement was filed after the corrigendum.

11. In such circumstances the allegations leveled by the petitioner in the claim statement can not be accepted. The petitioner is not entitled to any relief.

12. Award as above.

30.08.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 234.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 112/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-41011/35/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 112/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 19.01.2017.

[No. L-41011/35/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 112/2011

Ref.No. L-41011/35/2011-IR(B-I) dated 27.07.2011

BETWEEN :

The Mandal Sanghatan Mantri.
Northern Rail Employees Union
283/63 KH(B) Ghari Kanora, Premvati Nagar
PO Manak Nagar
Lucknow

AND

1. The Sr.Divisional Personnel Officer,
North Eastern Railway, DRM Office
Ashok Marg,
Lucknow

AWARD

By order No. L-41011/35/2011-IR(B-I) dated 27.07.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between The Mandal Sanghatan Mantri, Northern Railway Employees Union, Lucknow and the Sr.Divisional Personnel Officer, NER, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTH EASTERN RAILWAY IN NOT PROMOTING SHRI ABID s/O SRI HUSSAINI, MESON GRADE-I TO THE POST OF FITTER IN THE YEAR 2000 AND SUBSEQUENTLY TO THE POST OF MCM BEFORE HIS JUNIORS, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE UNION/WORKMAN CONCERNED IS ENTITLED ?”

3. The workman in his claim statement W3, has stated in brief that he is working as Meson Gr.-I under CDO, NER, Lucknow. It has been stated that in the year 2000 several other employees junior to the workman viz. Sri Suraj, Sri Raghunath Prasad and Sri Mohd. Umar were promoted to the post of Fitter while the workman being senior was not promoted, subsequently he could not get the another timely promotion to the post of MCM.
4. The workman has further emphasized that other junior employees Sri Ashfak Lohar & Sri Shakeel Ahmad were posted as Fitter in the year 2000 against the Railway Rules and provisions of I.D. Act., which is clearly unfair labour practice. Several representations have allegedly been sent, which are still pending. With the above pleadings the workman has prayed to provide him salary and other consequential benefits from the year 2000 treating him on the post of Fitter, and awarding promotion to him accordingly.

5. The management in its written statement M-8, have denied the allegations leveled in the claim statement. The opposite party has stated that the order of reference is mechanical in nature, submission made by the management before Conciliation Officer was ignored by the Competent Authority. Rules mentioned in Chapter I, Para 313-A, Indian Railway Establishment Mannual Vol-I have been quoted by the management in its written statement, and it has been asserted that while fixing seniority of surplus staff who are re-deployed in other cadres/departments, services rendered by the parent cadre/department while not be counted for the purpose of seniority and promotion, this provision was implemented w.e.f. 25.05.2004. The opposite party has stated that the workman has been posted as Fitter-I under CDO, NER, Lucknow and not as Mason Gr.-I. The chart showing the post and Grade prior to adjustment and after adjustment with the effective date have been given in para 5 of the written statement. It is clear from the persons named in the claim statement i.e. S/Sri Suraj Kumar, Raghunath Prasad, Mohd. Umar and Shakil Ahmad were adjusted in the fitter cadre w.e.f. the date of their joining with full seniority as they were adjusted prior to 25.05.2004. Sri Abid being surplus was adjusted in the Engineering Department on the post of Mason Gr-I (4500-7000) vide office order No. 331/E.11/Misc./V/C & W/2002 dated 04.04.2006 on administrative ground and he was posted under Section Engineer/Works Bandaribagh, Lucknow as Mason Gr.-I vide office order dated 09.05.2006. But he did not join the said post in the Engineering Department. Again Sri Abid was sent for technical/C&W Conversion course in Divl. C&W Training Centre, Lucknow vide letter No. E/II/283/Training/C&W/10 dated 23.03.2010 but he did not attend the said course. Thus it is clear that Sri Abid the workman, was himself reluctant and did not want to go. Had he joined in the Engineering Department in compliance of office order dated 09.05.2006 he would have been assigned the seniority and would have become eligible for promotion in accordance with rules. The allegations of violations of Railway Rules and unfair labour practice are misconceived and vehemently denied.

6. The management has emphasized that the claim is misconceived and the applicant wants to gain undue benefit of his own wrongs by abusing the process of law. The opposite party has prayed to dismiss the claim statement.

7. While denying the version taken in the written statement, the workman has reiterated the main allegations leveled in the claim statement and filed rejoinder W-9.

8. The Railway Administration preferred the writ petition before Hon'ble High Court against the Award dated 09.10.2001, which is still pending in the Court, it has been submitted.

8. Affidavit M-12 and certain copies of the documents have been filed by the management.

9. In his evidence the petitioner has filed affidavit W-13, he has been thoroughly cross examined on behalf of the management. The management filed the affidavit as M-19 of Sri Pradeep Kumar, APO, learned AR for the workman thoroughly cross examined the management witness.

10. Arguments of both the parties have been heard at length. Record has been perused thoroughly.

11. Learned AR for the workman has alleged that the petitioner was not granted promotion to the post of Fitter in the year 2000 and subsequently to the post of MCM, while other employees junior to him have been granted promotion earlier. Learned AR for the management while refuting this argument, has submitted that the petitioner vide an order dated 9.5.2006, was posted as Mason Gr.I under Section Engineer(Works), Bandaribagh, Lucknow but he did not join the said post, again he was sent for Technical/C&W version course in Divl. C&W Training Centre, Lucknow vide an order dated 23.3.2010 but he did not attend the said course. Moreover in the C&W, NER, Lucknow the posts of Mason cadre were rendered surplus, consequently posts were surrendered and the surplus staff of Mason cadre were redeployed/adjusted in the Fitter cadre of C&W department. Learned AR for the management has further submitted that the petitioner was also adjusted in Fitter Grade I on 26.7.2010, and since he has accepted this adjustment, he is unnecessarily make the false allegations against the management. It has also been emphasized by the management that other employees viz. Mr. Suraj Kumar, Mr.Raghunath Prasad, Mr. Mohd. Umar and Mr. Shakil Ahmad were adjusted in the fitter cadre prior to 25.5.2004, but the petitioner who was asked to join as Mason Gr.I vide letter dated 4.4.06 and 9.5.06, did not join the said post in the Engineering Department neither he attended the technical version course; the petitioner was reluctant otherwise he would have been assigned the seniority and he would also have become eligible for promotion in accordance with Rules.

12. Learned AR for the management has placed reliance on the principle laid down by the Hon'ble Supreme Court in 2004,SCC(L&S) Supdt. Engineer & others vs A.Sankariah page 145.

13. Learned AR for the workman submits that the aforesaid ruling does not apply in the present case. Learned AR for the opposite party strongly objects to this submission.

14. The workman in his cross examination W-14 dated 21.08.14 has admitted before the then Hon'ble Judge/ my learned predecessor that the post of Mason was declared surplus in the year 2000, and although being offered/asked to joined as Fitter Gr.I in the Engineering Department at Bandaribagh office, he did not join. On page 3 of the cross

examination the workman has also accepted that other employees viz. Mr. Suraj Kumar, Mr. Raghunath Prasad, Mr. Mohd. Umar and Mr. Shakil Ahmad being surplus, have joined in 2004 and Mr. Ashfaq as technician in the year 2000.

15. It is admitted fact, as per the pleadings and evidence available on record that the petitioner was adjusted on 26.07.2010 as Fitter I and prior to adjustment his post was Mason Gr.I. Earlier letters issued by the management were not adhered to by the petitioner and being reluctant he did not join.

16. After having heard intellect arguments of both the Learned ARs, and thorough scanning of the record it is inferred that the impugned action of the management, in not granting promotion to the petitioner, as alleged in the claim statement, is neither illegal nor unjust. The action of the management has been as per Rules. Therefore, the petitioner is not entitled to any relief.

17. Award as above.

LUCKNOW

26.08.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 19 जनवरी, 2017

का.आ. 235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 65/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.01.2017 को प्राप्त हुआ था।

[सं. एल-41011/417/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th January, 2017

S.O. 235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Northern Railway and their workmen, received by the Central Government on 19.01.2017.

[No. L-41011/417/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 65/2011

Ref.No. L-41011/147/2010-IR(B-I) dated 25.04.2011

BETWEEN :

The Mandal Sangathan Mantri
Uttar Railways Karamchari Union
E-165, Sector-G, LDA Colony
Kanpur Road Lucknow

AND

1. The General Manager
Northern Railway, Baroda House
New Delhi
2. The Div. Railway Manager
Northern Railway
Hazratganj,
Lucknow

3. Sr.Divisional Signal & Telecom Engr.
Northern Railway, Lucknow

AWARD

2 By order No. L-41011/417/2010-IR(B-I) dated 25.04.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Mandal Secretary, Uttar Railway Karmchari Union, Lucknow and the General Manager/DRM/Sr.Divisional Signal & Telecom Engineer, NR, Lucknow/New Delhi for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF NORTHERN RAILWAY LUCKNOW/NEW DELHI IN NOT COUNTING THE SERVICE FROM 20.08.1971 TO 15.03.1976 RENDERED BY SRI SATYA NARAYAN SHUKLA, DIESEL MECHANIC/MCM, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMEN IS ENTITLED?”

3. As per the Claim statement W-5, the workman union has stated in brief that the concerned workman was initially appointed as Diesel Motor Mechanic on 26.08.1971 against substantive post after fulfilling all the requisite formalities, and thereafter he was given the status of Motor Diesel Mechanic w.e.f. 15.03.1976 in pay scale of Rs.330-480 and he was also given the benefit of annual increments. The applicant presently working as Diesel Motor Mechanic/MCM, has asserted that he had worked without any break and was being paid regular salary but suddenly without any genuine reason he was reverted to the grade carrying the pay scale of Rs.260-400 under the garb of fresh appointment.

4. It has been stressed by the petitioner that his reversion was totally illegal and unjustified, since he was appointed by the competent authority and was given higher pay scale of Rs.330-480, therefore he can not be appointed with the same employer in the lower pay scale. The workman asserted that several efforts were made to settle the grievance through negotiations, several representations were also made but the same have not been redressed yet, the workman was suffering irreparable loss and injury. In the service record, somewhere the date of appointment has been shown as 15.3.76 and at some other places it has been mentioned as 26.8.1971, but since it is crystal clear that he was firstly appointed on 26.8.71 thus all the benefits should have been extended w.e.f. the date of entering into the service viz. 26.8.71. Due to the aforesaid reasons the benefits of pay scale have also not been duly provided to the workman.

5. It has been emphasized by the applicant that any incumbent cannot be reverted back to the lower grade without providing opportunity of hearing and in the instant case no opportunity was ever afforded before lowering the grade. Earlier Industrial Dispute raised by the workman was referred by the Government in the following terms;

“WHETHER THE ACTION OF THE RAILWAY ADMINISTRATION IN RELATION TO SR.D.S.T.E. NORTHERN RAILWAY, LUCKNOW IN SUPERSEDING SRI S.N. SHUKLA HIGH SKILLED DIESEL MOTOR MACHANIC GRADE II BY HIS JUNIOR SRI SRIRAM FROM SEPT.1982 IS JUSTIFIED? IF NOT, TO WHAT RELIEF IS THE WORKMAN CONCERNED ENTITLED?”

6. The aforesaid dispute was registered as 59/84 and as per the claim statement CGIT adjudicated the award in favour of the workman directing thereby that the workman is entitled if not higher but equal pay to that of Sri Sriram w.e.f. Sept.1982 and be shown above Sri Sriram in the seniority list. The workman has asserted that the action of the management in superseding him was declared illegal by the Hon'ble Tribunal but the management categorically informed that the workman was being disbursed already higher pay and as such he is not entitled to any other monetary benefits. The petitioner has further stressed that he has not raised the instant dispute earlier, the matter is lying pending since long time, all the efforts to settle the grievance have failed. The workman came to know for the first time through letter dated 04.01.2008 sent by the management under the RTI Act., that the services rendered by the workman w.e.f. 20.08.71 till 14.03.76 have been excluded. The workman has submitted that the act of the management amounts to colourable exercise of powers and it is a kind of punishment, and it is settled principle of law that temporary government servants are also entitled to get protection of Article 311 of the Constitution of India, the management has adopted unfair labour practice. With the aforesaid pleadings the petitioner has requested to declare impugned action of the management as illegal and unjustified, and request has also been made to remove the anomaly with revision of the pay scale granted from the date of initial appointment viz 26.08.71 with all consequential benefits regarding arrear of pay etc.

7. The management in its written statement M-6, while strongly refuting the allegations leveled in the claim statement, has submitted that the workman was engaged as casual labour on the basis of ELA in pay scale of Rs.330-480 and was regularized on 7.3.80 in the pay scale of Rs.260-400 against the regular post, and the pay drawn by the workman on ELA basis can not be protected as regular appointment. The opposite party has asserted that the matter has already been decided by the CGIT, Kanpur, and certain directions were given which have been implemented by the

Railway Administration and the workman has again raised the present misconceived dispute after lapse of more than 20 years. The claim statement has been challenged on the point of delay and res-judicata as well.

8. The management has stressed that the award dated 30.10.85 adjudicated by the CGIT, Kanpur has been implemented by the Railway Administration and the workman earlier filed LCA case no.2/86 before CGIT, Kanpur which was rejected on 9.10.87 thereafter another case 9/02 was filed before CGIT, Lucknow which was rejected on 13.4.05. Writ Petition no.5319(S/S) of 1986 filed by the Railway Administration against award dated 30.10.85 was decided by Hon'ble Court on 31.7.97 with the following observations;

“The Award does not saddle any liability on the petitioner, therefore the writ petition does not carry any weight and the petition was dismissed.”

9. The opposite party has asserted that the matter has already been decided by the competent court, as per the service record of the worker he was appointed on 15.03.76, wrong facts have been mentioned by the workman and claim statement is baseless, misconceived and barred by limitation. The management has prayed to decide the matter in its favour.

10. Several documents have been filed with the written statement.

11. With strong denial of the facts mentioned in the written statement, the workman while reiterating pleas taken in the claim statement has filed the rejoinder W-7 with the request to grant the relief claimed therein.

12. As per list W-8 certain documents have been filed by the workman.

13. W-9 affidavit of the workman has been filed by the petitioner and he has been thoroughly cross examined on behalf of the management.

14. The management has filed the affidavit of Sri Samarjeet Singh, APO as M-11, he has also been cross examined by the workman. Thereafter alongwith application W-15 so called original certificate issued by Divisional Engineer, Head Quarter, Northern Railway, Lucknow has been filed by the workman.

15. Arguments of both the Learned ARs have been heard at length and record has been scanned thoroughly.

16. During the arguments before this Court, following rulings were referred;-

1. 1996(1) SCC, CP Agarwal vs PO, Labour Court and another, page 97
2. 2000, LAB.I.C., 3398 Wg. Cdr. H.R. Parthsharthy vs Centre for Development of Telematics page 3398
3. AIR 1985, Supreme Court, Arkal Govind Raj Rao vs CIBA Geigy of India Ltd. Page 985.

17. The principles propounded by Hon'ble Court of the aforesaid rulings, have to be interpreted in the light of facts and evidence available on record.

18. The authorized representative of the workman has submitted that the workman had been appointed as Diesel Mechanic on 26.08.1971 against substantive post after fulfilling all the requisite formalities and thereafter was given status of Motor Mechanic w.e.f. 15.03.1976. It has been submitted by the workman that the management of Railways is showing the date of his appointment as 15.05.1976 and somewhere as 26.08.1971; whereas from perusal of service records it is clear that he had firstly been appointed on 26.08.1971, therefore, all the benefits should be extended to the workman w.e.f. the date of his entering into the service i.e. 26.08.1971.

19. Per contra, the learned authored representative of the management has rebutted the submissions of the workman and has submitted that the workman had initially been engaged as casual labour on the basis of ELA in scale of 330-480 and was regularized on 07.03.1980. It has vehemently contended by the authorized representative of the Railways that workman had been engaged on 15.03.1976 instead of 26.08.1971, as claimed by the workman; moreover this issue had already been decided by the CGIT-cum-Labour Court, Kanpur vide its award dated 30.10.1985 in I.D. case No. 59/84, therefore, principle of Res-judicata applies to the present matter.

20. I have given my thoughtful consideration to the rival submissions of the learned authorized representatives of the parties and scanned entire evidence available on record, documentary as well as oral.

21. The workman has come with the case that he had been initially been appointed as Diesel Motor Mechanic on 26.08.1971 against substantive post after following due procedure, all benefits available to him should be extended to him w.e.f. 26.08.1971. On the contrary, the management has come up with the case that the workman had been appointed on 15.03.1976 and accordingly, all the service benefits is liable to be extended to the workman is w.e.f. 15.03.1976. Both the parties have relied upon the service records of the workman. The workman has filed the photocopies of his service records vide list of documents, W-8; whereas the management has field the same along with its written statement from paper No. 6/7 to 6/10.

22. From perusal of the respective pleadings of the parties and documents on record it is crystal clear that the parties are contending over the date of appointment and for their respective contention, very specifically, have relied upon the same set of document i.e. service record of the workman. Therefore, the present industrial dispute is liable to be decided on the basis of service record, available before this Tribunal; and admitted to the parties. The very first page of the service record, particulars of service, reveals two dates i.e. one the date of birth of the official/workman at serial No. 08; and second is the date of first appointment at serial No. 15. The management has stuck to the date of first appointment, which is mentioned as 15.03.1976 (paper No. 8/1 of the workman and paper No 6/7 of the management). The workman claims to be his date of appointment as 26.08.71, as mentioned in the trade test record, paper No. 8/9, which according to the management, is just an omission/error, which is inadvertent; rather deliberate.

Workman, in his cross-examination, has stated that he made attempt to get his date of appoint which is mentioned as 15.03.76; but he failed to give any particular of the same or any specific evidence, such as any representation etc.

Further, the entry made on next page of the service record (paper No. 8/2 of the workman and paper No 6/8 of the management), which reads as under:

“Sri S.N. Shukla S/o Sri Bhagwan Deen Shukla was tempo. appointed as Motor Mech on ELA basis under SSTE/ACSR/LKO in Gr. Rs. 330-480(Rs) with effect from 15-3-76 to 4-12-77 as per certificate issued by ASTE/ACSR/LKO attached. From 5-12-77 he has been absorbed onlime as Highly Skilled Diesel cum Motor Mech under DSTE/LKO in grade Rs. 330-480 (Rs) against ELA basis.”

The above entry is not disputed by either parties which goes to show that the workman had ‘initially’ been appointed w.e.f. 15-03-1976, contrary to the pleadings of the workman i.e. w.e.f. 26-08-1971.

23. Furthermore, another entry at page No. 1 of the service record i.e. ‘Particulars of Service’, at serial No. 08, which is the date of birth of the official/workman and the same is not disputed by either of the parties. The date of birth of the workman is mentioned to be as 10.09.1953 and if for the argument’s sake it is taken that the date of initial of the workman was 26.08.1971, as claimed by the workman, then it goes to show that on the date of his entry into the Railway’s services he was approximately of 17 years 11 months and 17 days’ age which is less than 18 years, essential for entry into Government service. Therefore, the claim of the workman that he had initially been appointed w.e.f. 26.08.1971 cannot sustain at all. The workman also failed to show any Rule which makes him entitled for entry into railway’s service when he was under age i.e. less than 18 years’ of age.

24. Therefore, keeping in view, the facts and circumstances of the case, respective pleadings of the parties and documentary as well as oral evidence relied upon by the parties, I am of considered opinion that the workman has utterly failed to prove through cogent evidence that he had been initially appointed w.e.f. 26.08.1971; and accordingly, I come to the conclusion that the action of the Management of Northern Railway New Delhi in not counting the service from 20.08.71 to 15.03.76 claimed to have been rendered by the workman, Shri Satya Narayan Shukla, Diesel Mechanic/MCM, is neither illegal nor unjustified; resultantly the workman is not entitled to any relief whatsoever.

25. The reference under adjudication is answered accordingly.

26. Award as above.

LUCKNOW

22nd December, 2016

RAKESH KUMAR, Presiding Officer